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AN ELECTIVE JUDICIARY.

We do not propose to discuss the question whether judges should be elected by the people, for we suppose the arguments against that system are generally and clearly understood. We desire at this time simply to put on record the admissions of those who are acquainted with its results, that the system of electing judges by the people has proved to be "the fertile source of infinite mischief." These admissions come mainly from the press of New York; the State which, by its constitution of 1846, establishing an elective judiciary, with short terms of office, followed the bad precedent, which has in turn been imitated by many of the States of the Union. The alleged purpose of the change in the judicial system, was to cure admitted abuses; but the remedy has been found to be worse than the disease, especially in the city of New York. We quote from one of the New York papers, a fair representative of the tone of the press upon this matter, and, if we mistake not, in years gone by a zealous advocate of an elective judiciary.

"And so it goes. All the better class of lawyers, the men who, by years and service, merit the honors of the profession, shrink from a nomination to the bench as if it involved contamination.

"There is something very deplorable in this state of things; the more so, because it renders judicial station so

much more accessible to the rogues and vagabonds of the profession. The prominent candidates now for some of the most responsible judgeships in this city, are men whose presence on the bench would be entirely fatal to its reputation for probity or learning, men who are to be reached, not by appeals to the laws or to their understanding, but to their most sordid interests.

"It is the character of the men they are likely to be brought in contact with, that makes our best lawyers so averse to accept a judicial nomination, for they know that they must sooner or later share the odium which such men will bring upon their associates, however gifted and irreproachable the latter may be.

"It is very clear that something must be done, and that very soon, to stay the rapid deterioration of our judiciary, or it will be in New York as in Mexico and Turkey; that the man with the longest purse will be always the successful litigant. Our administration of the criminal law is upon the verge of that now, and the corruption will rapidly spread to the civil tribunals, where the vast pecuniary interests at stake, offer a thousand times greater temptations to a corruptible judge, than a criminal judge is ever exposed to.

"It is sufficiently apparent, we believe, that no inconsiderable share of the evils of the present system originates in the popular method of selecting judges. When introduced, the elective system removed or put an end to many abuses, and in that way did good, but its mission has been fulfilled, and we are persuaded that it is now the fertile source of infinite mischief. It ought to be abandoned at once, and we hope a reform in this part of our State Constitution may be taken up by the next legislature, without distinction of party, and a system adopted, which the people will approve, and which will attract to the bench the best talent and the highest virtue of the profession, instead of repelling both, as at present."

The character of some of the delegates, purporting to be elected to a convention of one of the political parties in the city of Brooklyn, for the nomination of candidates for the judgeships and judicial offices, is thus described by the District Attorney of Kings County, who seems to speak from personal knowledge. It should be borne in mind, however, and all due allowance made for the fact, that the

description was given in an address to a political meeting of a different party organization.

"I hold in my hand a list of the delegates who purport to have been elected to the convention of the ———. In the first ward, two delegates are named who have recently been indicted and convicted of crime, since the first of January, who are well known to the police; and who, nevertheless, seem to have become essential to the representation of the first ward in democratic conventions. Then, glancing at the list of the sixth ward, there is a delegate who has been arrested over and over again for crime in this city, indicted and punished; well known as a disreputable character, — an outlaw, dangerous to society in every way. And yet he has become so important in our local government that he is sent to a convention to select our judges, sheriffs, and other officers. Then take the tenth ward. I cannot go over all of such names in the list, for want of time; but to the tenth ward names I would particularly call your attention. I met a democrat of the tenth ward on the morning of the primary election for delegates, and remarked, 'I suppose you are going to the primary to-night?' 'No, sir; not I. I have no ambition to get my head pounded,' was his reply. I did not fully appreciate the force of his remark until the next morning, when I discovered that in that ward, among the delegates elected, was a fellow who has been pounding stone in the penitentiary, as a convict, all summer, and whose sphere of usefulness, it seemed, had been changed from pounding stone in the penitentiary to pounding heads at the primary. This man had been indicted for robbery, — convicted as a criminal under that indictment, and sent to the penitentiary for ninety days, getting out just in time to run the primary machine in the tenth ward. Another fellow in the same delegation has not had quite so bitter an experience of his deserts, but his ambition and tendencies lie quite in the same direction. Another, from the same ward, has become well known to the police as requiring to be looked after. And still another, who attended the city convention, is notoriously a very efficient man to run the primary machine, regardless of all consequences, having the faculty which distinguishes great warriors, of marching on to the completion of his task over dead bodies if necessary. And from the same ward, again, is a man well known on our criminal records as having been indicted and convicted of offences, — a notorious bully and ruffian. And thus, it seems, the regular democratic party of the tenth ward cannot select candidates for important offices without sending such a crew as this to cast the vote of the ward in their selection. And finally, to cap the climax, there is yet another name here, of a person whom I recollect trying for manslaughter some years ago, when acting as Assistant District Attorney. I remember his coming into court, — everybody spoke of him as a 'short-haired boy,' — a description which he certainly answered. He was convicted and sent for eleven months to the penitentiary of this county, under the sentence of the city court, prior to Judge Culver's term. That man has pursued that kind of life ever since, — is well known to the police as a ruffian, — and yet they can't get along without sending this man to their conventions to decide who shall rule us. Then the twelfth ward presents a name well known on our police records, — a man who, in any other country than this, would figure in an institution of a penal character, instead of in a political convention.

"Here is a convention comes together to nominate a city judge, to whose hands are to be intrusted the highest and most sacred responsibilities. A man could not have got a nomination unless he stood well with these

dangerous classes, — and that is a bad premonitory symptom, as the doctors would say. To obtain their good-will he must have catered to their tastes, and taken pains to stand well with them, in order to get their support as against respectable men. He is thus demoralized from the start, and entirely unfitted for the faithful discharge of the judicial duties. I do not believe in the election of judges, — it is one of the greatest wrongs ever inflicted on a free society, at the best, — but what does it become when judges are nominated by these men whom I have described from the criminal records? What is his position if elected? Why, he is in the hands of the Philistines. Mark the career of such a judge. You will find him yielding and conceding to the criminal element in our community, instead of administering justice.

* * * "On the morning of the day on which the regular democratic city convention assembled, a gentleman of democratic politics, high in official position, and whose name is known and respected by us all, said in my presence, and that of several others, that a convention would meet that afternoon to make a judge; that there were but six decent men going there; that those six ought to be warned not to attend, and the police might properly make a descent on the place, and arrest the remainder as vagabonds and vagrants. That statement, though forcible, was but too true. The scenes which marked the deliberations of the convention (if such they might be called) beggared all description. When the nomination of city judge was made, the window was thrown open, and one of those energetic primary boys whom I have been describing, announced the nomination in language unfit for me to utter or for you to hear."

The character of the nominee of one political party for the important office of city judge, may be inferred from the following report of his speech when claiming or accepting the nomination, which we find in a New York paper: "He said, he had just come from Ireland. . . . He also remarked that his bones and sinews were made up of Irish beef, Irish potatoes, and a small taste of whiskey. He concluded with the promise that if elected to the city judgeship, he would not forget his friends or his party, and would do his duty; and with a request to the president of the meeting to put him down for whatever sum he liked, and he would give a check for the amount."

The following letter of Judge Edmonds, declining the nomination as candidate for the Recordership of New York City, is a paper of much importance in this connection: —

"New York, Sept. 28, 1860.

"To Hiram Barney, Esq. Dear Sir: During my recent attendance on the court of appeals, I learned that I had been put in nomination for the office of recorder by the republican judicial convention, and I avail myself of the moment of my return to town, through you, to address the convention on the subject.

"A few days before you met, I was told that Mr. Bonney declined to be a candidate for justice of the supreme court, and was asked if I would

take it? I promptly answered, No, under no circumstances; that the office had nearly killed me when I was in it, and to take it now, when its duties had so largely increased, would soon finish me.

"In reply to my rather curt refusal, some remark was made about the duty each one owed to the public. I acknowledged that, but did not see how that duty should point only to that position; if there was any one that I would take, it would be that of Recorder, because there I could do so much good.

"Out of this remark I discovered that an inference had been drawn that I would accept the post, and I endeavored to correct that impression at once. Still, I have been nominated, and under circumstances which awaken in me the liveliest sense of the respect paid to me.

"The office of Recorder of this city is the most important judicial position in the State, and is the best paid. It can properly be filled only by one possessed of unapproachable integrity, of profound legal knowledge, and great judicial sagacity; for the court over which the Recorder presides is the most important criminal court on this continent, and can exert greater influence on the public peace, and the lives and liberty of our citizens, than all the courts in the city put together; and I appreciate the confidence reposed in me by deeming me worthy of so responsible a position.

"But still, I do not see how I can accept it. If I could be assured that I should be defeated at the election, I would cheerfully consent to be your candidate; but I am afraid I should be elected, and it is out of that fear that my refusal springs.

"I am aware how much good I could do in the office; but it would take time to place the court in the condition which I should aim to give it, and I am persuaded that that time would not be afforded me. My tenure of office would be only three years. While on the bench I should of course be withdrawn from political action, and could not resort to the usual means to secure my continuance in it; while, on the other hand, ambitious aspirants for the position would be restrained by no such consideration, and would easily oust me, long before I could give any permanency to the character I should aim to give my court.

"It is owing to this cause, doubtless, that since our adoption of the practice of judicial election, not a single Justice of the Supreme Court has been re-elected in this city; out of fourteen Justices of the Superior Court only four have been re-elected, and a Recorder, — never.

"I could expect no exemption in my case from this seemingly inevitable fate of the judiciary in this city, and I must calculate on being removed long before attaining the end the prospect of which could alone induce me to take the office.

"Besides, the shortness of the term would continually subject me to the imputation of shaping my decisions in reference to a re-election. I experienced this at the close of my judicial career, and I had abundant cause to know that I was thereby shorn of my independence, and my usefulness was impaired. I felt this so keenly that I then resolved never to undergo it again.

"I have already been made aware of the anxiety there is in many to have me take the place, and in coming to a determination on the subject I have endeavored to avoid all selfish considerations. I have therefore dwelt but little, even in my own mind, on the pecuniary sacrifice it would be to me, or on the disturbance that would ensue to a business that I have been fortunate enough to build up around me, and which supplies me with all I want, yet leaves me in full freedom to act on all occasions according

to my conceptions of what is best; and I have been governed by considerations which I owe it to the Convention frankly to mention, even at the hazard of being misunderstood.

"When I spoke of the good I could do as a motive for accepting the place, I had in my mind the cases, so frequent in our criminal courts, of innocence unjustly accused, and often struck down, because unfriended and unprotected; and I could easily imagine the gratification that would flow from being able to guard it in its hour of peril. But until I saw there was a possibility of being inducted into the office, I did not look far enough to see the whole ground, and to become aware that in much the greater number of instances it would be my destiny to condemn rather than relieve. It would be painful to me thus to sit in judgment on my fellow-men, and to condemn when I would far rather pity and forgive, and endeavor to reform.

"When I now recall my past judicial career, where the administration of criminal justice was of rare, and not, as it would be here, of constant occurrence, I find that the most vivid feeling I have is the painful recollection of the many cases in which I was called upon to condemn and to punish the erring.

"I do not see how I could bear that again, and especially the greatly increased amount of it that would naturally flow from the peculiar jurisdiction of the Court.

"It is this consideration, more than all others, which has influenced me to decline this nomination; and I have been thus full and frank in stating my reasons, because I have felt that my doing so was the only compensation I could render to the Convention, whose wishes I am obliged to disappoint, for their kindness to me.

"I am very respectfully yours, &c.

"J. W. Edmonds."

With what significance come the words and the parting counsel of the late venerated Chief Justice of Massachusetts, in his reply to the address of the Bar of the State. "Above all, let us be careful how we disparage the wisdom of our fathers in providing for the appointment to judicial office, in fixing the tenure of office, and making judges 'as free, impartial, and independent as the lot of humanity will admit.' Let no plausible or delusive hope of obtaining a larger liberty, let not the example of any other State, lead you in this matter to desert your own solid ground, until cautious reason or the well-tried experiment of others shall have demonstrated the establishment of a judiciary wiser and more solid than our own."

A LESSON IN EVIDENCE.

THE MYSTERY OF THE ROAD MURDER.[1]

The mystery that enshrouds this terrible tragedy gives to it an extraordinary interest for those who are accus-

[1] From the Law Times, August 4, 1860.

tomed to the sifting of evidence. It is a lesson for the law student, and an interesting problem for the lawyer, and as such we treat of it here.

On the night of Friday, the 29th of June, in a house at Road, the family of Mr. Kent retired to rest at the usual hour, in health, and apparently at peace, having first closed the doors and windows. The family consisted of eleven persons, all of whom slept on the same floor. In one room the father and mother, in another a son by a deceased wife; in a third room, a daughter by that dead wife; in a fourth two other girls, daughters by the deceased wife; in a fifth, two maid-servants; in the sixth, the nursemaid, Elizabeth Gough, and the two youngest children by the second wife.

One of these children, an infant, slept in a cot by the side of the bed in which was the nursemaid; the other, a little boy of the age of three years and a half, slept in a cot, which was placed against the wall at the other side of the room, and at a distance of some six or eight feet from her bed.

Elizabeth Gough went to bed, on the night in question, at half-past eleven o'clock. Both the children were then sleeping tranquilly in their cots. She closed the door of the room, and fell asleep. She slept the night through without being disturbed. She woke shortly before seven o'clock on the following morning, and on rising to look at the children, she found that the little boy was not in his cot, but the coverlet was neatly and carefully replaced after having been turned back to take out the child. Concluding that his mother had come in and taken him to her own bed, she proceeded to dress. Having done so, she went to the mother's room to fetch the child, that she might dress him, but was told he was not there. She then went to the room of the sisters, expecting to find him there, but nobody knew aught about him.

The alarm was given. The house was found to have been changed since it was fastened the night before. The window and shutters of the drawing-room were open, but no traces of footsteps could be seen upon the carpet or in the passages, although the nurse states that she noticed impressions as of hob-nailed boots, but no other eye could see them.

The first supposition was that the child had been stolen during the night. The father went off to the neighboring

town to give information to the police. Two of the neighbors, — Benger, a laborer, and Nutt, a shoemaker, — instituted a search on the premises. Some suspicion appears to have existed in the mind of Benger, for he at once entertained the thought that there had been foul play, and he said, "he should look for a dead child." They proceeded to a privy in the garden, to which a gravel walk conducted from the house. On entering it they saw a large pool of blood, and Benger exclaimed, "It is as I predicted." Opening the seat, they found a sloping slab, also bloody. Below this was a large cesspool full of water and soil. Half submerged in it was the body of the missing child, wrapt in a blanket saturated with blood. His throat was cut, so as almost to sever the head from the body, and there was a deep stab in the breast, just above the region of the heart; but the state of the tongue showed death by strangulation. His night-dress was still upon him. The blanket in which he had slept was still around him. Some pieces of newspaper were found smeared with blood, as if they had been used for wiping blood from something; but whether they indicated use by way of wiping from a flat surface, as a floor or seat; or from a filamentous surface, such as a dress; or from a double surface, as a knife, the reports are silent, although this was a most material fact to be looked to.

The corpse was carried into the house and placed in the kitchen, and there it was seen by all the inmates, including Miss Constance, the eldest daughter of the first wife, who exhibited only the usual emotions of horror and grief at the sad spectacle.

Who was the murderer?

It was soon established beyond reasonable doubt that it was not done by any person who had entered the house for the purpose; consequently the crime was committed by, or at least with the connivance of, one or more of the inmates of the house on that night.

Who among them were competent to do such a deed? There were only seven persons, — namely, the father, the mother, the nursemaid, the two other servants, the brother, and the elder sister. It must have been done by one at least of those seven persons.

The first suspicion naturally alighted upon the nursemaid, in whose room the child had slept; but upon the strictest

investigation no single circumstance was elicited to justify it. There was an entire absence of motive; she was fond of the child, and her whole conduct had been consistent with innocence, and inconsistent with guilt. Not the remotest suspicion appears to have attached to the two other servants. Nor is it possible to suspect the mother, for the little boy was her favorite child. Thus, by the process of exhaustion, the limit of suspicion is reduced to three persons, and three only, — the father, the half-brother, and the eldest half-sister of the murdered child.

Let us now see what is the weight of evidence as respects them. And first to motive. When a crime such as this is committed, the first inquiry made by all rational men is, what was the motive? Clearly it could not have been gain. We may therefore conclude that it was *malice*. Nor is malice against the murdered child the only motive that can be imagined. The child was his mother's pet, and *malice against his mother*, — a fiendish desire to inflict a wound on her through him, — would be a motive neither impossible nor improbable. But no motive of malice whatever on the part of the father can be traced or imagined, for he was partial to this child.

But there existed, undoubtedly, a motive of malice on the part of the only other two persons. Both of them, brother and sister, entertained very strong feelings of hostility, almost amounting to hatred, towards the mother of the child, who was their mother-in-law. She had been their governess before the death of their own mother, and they knew that she had won the affections of their father while their mother was yet living. They had complained of neglect and ill-treatment by her, and of her partiality for her own children. So unhappy was their home, and such their hatred of her, that a few months previously they had actually eloped in disguise, the girl dressing herself in boy's clothes, for the purpose of hiring themselves as cabin-boys in some ship. They were detected and sent home again, and there is no evidence that their subsequent treatment had been improved, or that their hostility to their mother-in-law had been lessened.

Here, then, we have proof of the existence of a manifest *motive* for the crime. If any person could desire to inflict pain on a mother, he could not hit upon a more certain

means of accomplishing his purpose than by killing her pet child.

This is the first step in the inquiry. It establishes,

First, that the child was removed from the bed by an inmate or inmates of the house.

Secondly, that of those inmates, only seven were competent to this.

Thirdly, that of these seven, four at least were beyond suspicion.

Fourthly, that no motive can be traced to one of the remaining three.

Fifthly, that there is evidence of the existence, in the other two, of a sufficient motive.

Is there, then, any evidence beyond the bare fact that they had *a motive* for doing it, and that both or one of them could have done it? There is.

The nursemaid is a light sleeper, yet she was not wakened. Therefore the child must have been removed stealthily by a person without shoes. The child must have been lifted with gentleness, and the coverlet must have been thrown off, for the blanket was taken, and only a light and practised hand could have restored it so neatly, yet silently, to its place.

From all these circumstances, the probable conclusion is, that the child was taken from the room by a female hand.

The hand that took it from the room probably carried it to the window, but there is not the slightest clue to the next step in the inquiry, — By whom was the child carried to the privy, strangled, stabbed, cut in the throat, and thrust into the cesspool? Was it the same hand that threw back and restored the coverlet so neatly, or the ruder hand of a confederate without? The flannel not known to the house, which was with the body, the wounds, the strangulation, the absence of the knife, and of all traces of blood in the house, or on the clothes of any inmate, seem to point to the conclusion that a gentle hand within the house carried the sleeping victim to some coarser hand that did the horrid deed without.

Such would probably be the conclusion if nothing more had appeared. But there is other evidence that serves only to deepen the mystery.

The child was probably removed by a female without shoes, and if by one of the females in the house, it is prob-

able that she would also have worn her night-dress. Therefore it was most important that the night-dresses worn on that night by all who were in the house, should have been closely inspected.

This occurred to the detective, although, strange to say, it was overlooked by the authorities who first undertook the inquiry.

It then appeared that all the night-dresses were accounted for, *save one*, — the night-dress worn on that night by Miss Constance was missing. To say the least of it, this was a singular coincidence.

What account is given of this night-dress?

It appeared that the servant had placed this very night-dress in the dirty clothes-basket, for the purpose of sending it to the wash. While she was covering the basket, Miss Constance came into the room, and asked her to look for her slip among the dirty clothes, as she thought she had left her purse in it. The servant opened the basket to look for the slip, turned over the things, and found the slip, but no purse was there. Thus, an opportunity was given for the position of the night-dress in the basket to be seen. The young lady then requested the servant to go down stairs and fetch a glass of water for her. She had never done so before. The servant went accordingly, leaving the lady alone with the basket containing the night-dress. The servant returned in two or three minutes, with the water, and found the young lady in the place where she had left her. The basket was afterwards carried away by the washerwoman, and the night-dress, which the servant had put into it, was not there.

Here, then, if there was a desire by Miss Constance to obtain possession of the night-dress, was the obvious means by which she could have done so. The search for the slip would have enabled her to see whereabouts it lay in the basket, and to snatch it out on the instant the servant was from sight; the absence of the servant on her errand offered the necessary time; the modern dress would have provided a means for its concealment, and there was a long interval afterwards for its destruction.

These are suspicious circumstances, certainly. It is singular that the night-dress of the person most suspected should be lost, and still more singular that she should have been in its near neighborhood, and having something to do

with the dirty clothes-basket that contained it just about the time of its disappearance. On the other hand, the servant who put the dress into the basket noticed nothing about it of a suspicious nature. She, however, only looked at it casually, — she did not examine it,— and if there had been upon it any stains *imperfectly removed*, it is not probable she would have observed them.

There is one other fact bearing upon the case. When Miss Constance eloped with her brother, in boy's clothes, she threw her female apparel into the very privy where the child was thrown. It is not much, but it is something.

This is all that has been elicited. Put together, it amounts to a case of suspicion, nothing more. On the other hand, there is the improbability of a young girl first partly strangling a child of that age, and then using a knife to complete the work, then returning to the house, cleansing and restoring the knife, and creeping to bed unheard, and without a trace of blood upon her person or clothes.

The facts would rather indicate that the murder was actually committed by some confederate out of the house, to whom the child was carried by some female in the house.

If two persons were engaged in it there will be some chance of an ultimate revelation.

Benger's conduct requires explanation, and no account has been given of the boy who cleaned the knives.

RECENT AMERICAN DECISIONS.

Circuit Court of the United States. District of Massachusetts, September, 1860.

ROBERTS *v.* MYERS, ET AL.

A drama having been acted in a public theatre, will not prevent a copyright thereof being subsequently taken out.

The record of a copyright made in the form prescribed by the statute of 1831 is at least *prima facie* evidence that a printed title of the book was duly deposited in the clerk's office.

Where a copyright of a book has been taken out, a copy must be deposited in the clerk's office within three months after the publication; but public representation of a drama is not a publication so as to require a copy to be so deposited.

A literary composition may be a book entitled to copyright without being printed.

Where a person employed as an actor and stage manager, by the proprietor of a theatre, agreed with him to write a drama, which should be performed in his theatre as long as it should draw good audiences, — *Held*, that a copyright of the drama, when written, was properly taken out by the author, and that the proprietor had no other right than that of having the drama acted in his theatre.

An assignee of the exclusive right of acting and representing a drama for one year, throughout the United States, excepting five specified cities, may maintain an injunction suit in his own name against a mere wrong-doer.

The facts in this case sufficiently appear in the opinion of the court, by

SPRAGUE, J. — This is a motion for a preliminary injunction to prevent the acting of a drama called the "Octoroon." The complainant claims as assignee of Bourcicault, the author, who took out a copyright on the 12th of December, 1859.

The objections of the respondents divide themselves into two classes: as to the validity of the copyright, and the sufficiency of the assignment.

The first objection is, that this drama had been performed at the Winter Garden Theatre, in New York, on the 6th day of December, 1859, and several other days previous to the 12th, and that Bourcicault was thus precluded from taking out a copyright.

Whether a previous publication on the 6th of December would have precluded the author from taking out a copyright under the statute of 1831, I have no occasion now to consider, because acting or representing is not a publication. It has been so decided in England, both upon the question of infringement and upon the question of dedication to the public. And our statute of 1856, ch. 169, assumes the doctrine that representation is not publication, for that act was passed to give to the authors of dramatic compositions the exclusive right of acting and representing, which they did not enjoy under the previous statutes. Yet the prior acts secured to them the exclusive right of printing and publishing; and it was only because publication did not embrace acting or representation, that the statute of 1856 was passed, superadding that exclusive right to those previously enjoyed.

The second objection is, that no printed title of this work was deposited in the clerk's office, as required by statute of 1831, sec. 4.

The only evidence upon this point is the record from the clerk's office of the taking out of the copyright, which is in the form prescribed by that section. It is true that as a general rule the return or record made by an executive officer must set forth all the facts necessary to give validity to his doings, that the court may see whether the law has been complied with or not. But this statute prescribes the form of the return, or record to be made, by the officer, a part of which is that the author has deposited in the clerk's office "the title of a book," &c., "in conformity to an act of Congress, entitled," &c. The clerk is thus authorized to record that the title has been deposited in conformity with the act of Congress, and I think that that record is *prima facie* evidence that the title was such as the statute requires.

There is no evidence in this case that a printed title was not deposited. It stands merely upon the record. If the author is now to be required to prove by other evidence that this requirement of the law was complied with, he might be under the necessity, twenty years hence, of proving by parol that he had deposited a printed title, which is not required to be preserved otherwise than by the record, and when all the recollection of the transaction may have been lost; and this, too, although he had no power to have any other record made than that which the statute had expressly prescribed. I have said that the record is *prima facie* evidence that a printed title was deposited. Whether it is conclusive or not, I have no occasion to decide.

The third objection is, that no copy of this book was ever deposited in the clerk's office.

The statute requires that such copy shall be deposited within three months after publication. That time has not arrived. There has been no publication.

The fourth objection is that this drama was never printed.

By the statute, books, maps, charts, &c., may be secured by copyright. If this dramatic composition was a book within the meaning of the statute, it was the subject of copyright; and the question is whether the term "*book*," as applied to a literary composition, carries with it the requirement of its being printed. There is much evidence that in popular language at the present day, the term "book" implies a printed work, unless we are speaking of something other than a literary composition, as blank

books, &c. The statute requires a printed title-page to be deposited, and there is force in the argument that this indicates that the work is to be printed. So also the statute requires that a copy shall be deposited in the clerk's office, and be transmitted to the State Department; and copies were at one time to be sent to the library of Congress and the Smithsonian Institution; and it may be urged that Congress could not have contemplated that these copies might be in manuscript.

But the language of the statute, when describing what may be the subject of copyright, is, I think, decisive of this question. By the first copyright act, which was in 1790, it was provided, near the beginning of the first section, that "the author . . . . . of any book already printed within these United States . . . . . shall have the sole right and liberty of printing, &c., such book." And toward the close of that section it is provided "that the author of any book already made and composed and not printed or published, or that shall hereafter be made and composed . . . . shall have the sole right and liberty of printing, &c., such book." And the statute of 1831, now in force and under which this copyright was taken out, in section first provides that the "author of any book . . . . which may be now made or composed and not printed and published, or shall hereafter be made or composed . . . . shall have the sole right and liberty of printing," &c.

Here it is clearly expressed that a book may exist without printing; and such book when made or composed is to be entitled to copyright.

The objection therefore cannot prevail.

The fifth objection is that prior to the writing of this drama Bourcicault was in the employment of one Stewart, and wrote it as his servant, and that the work therefore belongs to Stewart. The only evidence of any agreement with Stewart is his answer to a bill in equity against him, in order to enjoin him from performing this drama in the Winter Garden Theatre in New York, of which Stewart was the proprietor.

That answer has been filed here as an affidavit.

If that answer had set forth an agreement such as the respondent now contends for, I have great doubt whether it would be sufficient without corroboration by other evidence to defeat Bourcicault's copyright. It was made by Stewart,

as a party to a suit in which the bill of complaint was under oath, and set forth a right in the author to the exclusive enjoyment of his own work, and I should certainly hesitate before I should, upon that answer alone, when filed here merely as an affidavit, overthrow the copyright of Bourcicault.

But the answer does not set forth any such agreement as the respondent alleges. It states that Bourcicault was in the employment of Stewart as a performer and stage manager. It does not say that he was employed as an author, but that while a performer and manager, he verbally agreed to write a play representing life on the Mississippi, and that it should be performed at Stewart's theatre as long as it should continue to draw good audiences. By this agreement Stewart acquired no right or interest in the play to be written, except the privilege of having it performed at his theatre. All other rights were retained by the author.

Suppose, instead of this being an agreement to write a play, and that it should be performed at that theatre, the play had already been written, and Bourcicault had made this agreement for its performance. It would be merely a license for its representation in a particular theatre; and the fact that the play was not then in existence cannot strengthen the right of Stewart, so as to give him any greater claim than he would have had if the drama had previously been written.

It is quite clear that Bourcicault, and not Stewart, was the proper person to take out the copyright, which extends to the whole United States. Stewart was not even an assignee for any portion of the United States, but at most a licensee for a particular theatre.

The sixth objection is to the right of Roberts to maintain this suit as assignee. It is rested on two grounds. *First*, that the instrument relied upon is a license and not an assignment. But the instrument itself in terms "assigns" the right therein named to Roberts, and I think that the parties intended it should have that effect. The second ground is, that the whole right of Bourcicault is not transferred, that it is only the right of representation, and that, too, for a limited time, and not for the whole territory of the United States.

The assignment is of the exclusive right of acting and representation in all places throughout the United States,

excepting the cities of Boston, New York, Philadelphia, Baltimore, and Cincinnati, for the term of one year.

Whatever force this objection might have at law, it cannot prevail in equity. The statute of 1834 sanctions assignments of copyrights, by prescribing the instrument by which they are to be made and a mode of recording them. It does not say what interest may be assigned. But there is no sufficient reason for preventing the author from conveying a distinct portion of his right. Divisibility as well as assignability enhances the value of his property, for he may find a purchaser able and willing to pay for a part, but not for the whole, of his copyright. The exclusive right of acting and representing is distinct from that of printing and publishing, created indeed by a new statute which superadds it to those pre-existing rights; and there is no good reason why it should not be assignable, and that, too, for a limited time.

The respondent is a mere wrong-doer who has invaded this copyright, and intends further to invade it, within the time and territory which the author, for a valuable consideration, has transferred to the complainant.

It is quite clear that this copyright being infringed and in danger of further violation by a person who has no color of right, the true owner ought to have a remedy.

But it is said that Bourcicault ought to be the complainant, or at least join with Roberts. Why so? His interest has not been invaded or endangered, nor can the non-joinder of Bourcicault in any way affect the defendant. He is not in danger of suffering from another injunction upon the suit of Bourcicault. To require him, then, to be joined with Roberts would be an idle and nugatory act, beneficial to no one; and such acts courts of equity do not require. There is no good reason why the injunction prayed for should not be granted on the application of Roberts alone.

Temporary injunction granted.

E. Merwin, for complainant.

T. W. Clarke, for respondents.

Supreme Judicial Court of Massachusetts.

SUSANNAH WHITNEY *v.* UNION RAILWAY COMPANY.

By a principle in equity that that which is agreed to be done shall be considered as performed, a purchaser of land with notice of a right in

it subsisting in another, is liable to the same extent as the person from whom he made the purchase, and is bound to do that which his vendor had agreed to perform.

Therefore a reservation in a deed, which restricts the grantee from using the premises for any nauseous or offensive trade or business, or suffering others to do the same, will bind the grantee and all subsequent grantees or assignees, except *bona fide* purchasers without notice.

Such agreement in a deed, although strictly binding only upon the original parties, will, in equity, be construed as creating a right in the nature of an easement appurtenant to the land.

A court of equity will give full effect to stipulations on complaint of the party, for whose benefit, as owner of the land, the stipulation was intended, although he cannot maintain a suit at law to enforce the stipulation as a covenant or contract in his own name.

But such suit must be seasonably commenced, before the person in possession of the estate has expended money and incurred liabilities in erecting buildings on the premises.

This is a bill in equity, setting forth that the complainant is and has been for some forty years the owner of certain lands in Cambridge, which at great expense she had caused to be surveyed and laid out by plans, and across which she has constructed and graded streets, for the purpose of selling the same for the erection of private residences thereon. Bounding upon one of the streets so laid out, called Lambert Avenue, she sold, Sept. 10, 1851, a lot to one Artemas White, subject to the following, among other reservations and restrictions, viz: "That if the said Artemas White, his heirs or assigns, shall suffer any building to stand or be erected within ten feet of Lambert Avenue, or shall use or follow, or suffer any person to use or follow upon any part thereof, the business of a taverner or any mechanical or manufacturing or any nauseous or offensive business whatever, then the said grantor or any person or persons at any time hereafter, who at the time then being shall be a proprietor of any lot of land represented upon said plan east of lot No. 27 and north of Lambert Avenue, shall have the right, after sixty days' notice thereof, with his, her or their servants, forcibly if necessary, to remove therefrom any building or buildings erected or used contrary to the above restrictions, and to abate all nuisances, without being liable to any damages therefor, except such as may be wantonly and unnecessarily done."

The bill further sets forth that the complainant is the owner and occupant of a parcel opposite White's lot, which lot by mesne conveyance has become vested in the defendants. White erected upon his lot, contrary to the remon-

strance of Whitney, a stable, and kept in it horses for hire and at livery. The defendants have enlarged and added thereto, and are making further additions, with the intention of keeping some forty horses, and for the purpose of storing their cars, besides laying down rails in Lambert Avenue and constructing a turn-table, all of which are alleged to be contrary to the reservations and restrictions in the deed to White, and to the great injury, nuisance, and annoyance of the orator.

The bill prays for an injunction to restrain the defendants from the erection of any additional stables, the laying down of any rails, and construction of the turnout; from keeping the horses upon the premises, and that they may be decreed to obviate and abate said nuisances.

To this bill the defendants filed their demurrer, as to such parts thereof as pray that they may be restrained from keeping the stable for horses, and that they may be decreed to remove and abate such stables. The court rendered the following decision.

BIGELOW, J.—The claims of the plaintiff to equitable relief rest mainly on the validity of the restrictions contained in her deed to Artemas White, of September 10, 1851, under which defendants hold the estate described in the bill. By the facts stated in the bill, and admitted by the demurrer, it appears that the complainant was originally the owner in fee of a large tract of land, which she caused to be surveyed and laid out in lots, with suitable ways or streets affording convenient access thereto, intending to sell them to be used and occupied by private dwellings. One of these lots she sold and conveyed to White by the deed above mentioned, containing the clause, as to the use and occupation of the premises, which is fully stated in the bill. This lot, by mesne conveyances, has become vested in the defendants. The complainant still continues the owner of a part of the tract originally laid out by her, and occupies a dwelling-house thereon, nearly opposite to the lot now owned by the defendants. She was, therefore, the original grantor by whom the restrictions were created, and is the owner and occupier of a part of the estate out of which the land owned by the defendants was granted, and for the benefit and advantage of which the restrictions were imposed. She has a present right and interest in their enforcement. The purpose of inserting them in the deed is

manifest. It was to prevent such a use of the premises by the grantee and those claiming under him, as might diminish the value of the residue of the land belonging to the grantor, or impair its eligibility as sites for private residences. That such a purpose is a legitimate one, and may be carried out consistently with the rules of law by reasonable and proper covenants, conditions, or restrictions, cannot be doubted. Every owner of real property has the right so to deal with it as to restrain its use by his grantee within such limits as to prevent its appropriation to purposes which will impair the value or diminish the pleasure of the enjoyment of the land which he retains. The only restriction on this right is, that it shall be exercised reasonably, with a due regard to public policy, and without creating any unlawful restraint of trade. Nor can there be any doubt that in whatever form such a restraint is placed on real estate by the terms of a grant, whether it be in the technical form of a condition or covenant, or of a reservation or exception in the deed, or by words which give the acceptance of the deed by the grantee the force and effect of a parol agreement, it is binding as between the grantor and the immediate grantee, and can be enforced against him by suitable process both in law and equity. The more difficult question, and the one on which the decision of this case must turn is, to what extent and in what cases are such stipulations binding on those who take the estate under the grantee directly or by a derivative title? Upon this point the better opinion would seem to be that such agreements are valid, and capable of being enforced in equity against all those who take the estate with notice of them, although they may not be, strictly speaking, real covenants, so as to run with the land, or of a nature to create a technical qualification of the title conveyed by the deed. This opinion rests on the principle that, as in equity, that which is agreed to be done shall be considered as performed; a purchaser of land, with notice of a right or interest in it subsisting in another, is liable to the same extent and in the same manner as the person from whom he made the purchase, and is bound to do that which his vendor had agreed to perform. Therefore an agreement or covenant, though merely personal in its nature, and which does not purport to bind assignees, will nevertheless be enforced against them unless they have a higher and

better equity, as *bona fide* purchasers without notice. It is on this ground that a purchaser of an estate, taking it with notice of a prior agreement by the vendor to sell it to another, can be compelled in equity to convey it according to such agreement. In like manner, by taking an estate from a grantor with notice of valid agreements made by him with his former owner of the property concerning the mode of occupation and use of the estate granted, the purchaser is bound in equity to fulfil such agreements with the original owner, because it would be unconscientious and inequitable for him to set aside and disregard the legal and valid acts and agreements of his vendor in regard to the estate, of which he had notice when he became its purchaser. In this view the precise form or nature of his covenant or agreement is quite immaterial. It is not essential that it should run with the land. A personal covenant or agreement will be held valid and binding in equity on purchasers taking the estate with notice. It is not binding on him merely because he stands as an assignee of the party who made the agreement, but because he has taken the estate with notice of a valid agreement concerning it, which he cannot equitably refuse to perform; 2 Sugden Vendors, 188–196; *Duke of Bedford* v. *Trustees of Br. Museum*, 2 My. & K. 582; *Bristow* v. *Wood*, 1 Collyer, 480; *Wheaton* v. *Gibson*, 9 Sim. 196; *Schouler* v. *Creed*, 10 Sim. 9; *Barrow* v. *Richards*, 8 Paige, 351, 356, 360.

The validity of agreements similar to those in the complainant's deed to White, has been also recognized and established, and their performance enforced in equity, as against subsequent purchasers with notice, upon the ground that such stipulations created an easement or privilege in the land conveyed, for the use and benefit of the grantor and those who may afterwards claim under him as owners of adjacent land, of which the land granted originally formed a part. In such cases, although the covenant or agreement in the deed regarded as a contract merely, is binding only on the original parties, yet in order to carry out the plain intent of the parties, it will be construed as creating a right or interest in the nature of an incorporeal hereditament or easement, appurtenant to the remaining land belonging to the grantor at the time of the grant, and arising out of and attached to the land, part of the original parcel conveyed to the grantee. When, therefore, it ap-

pears by a fair interpretation of the words of the grant, that it was the intent of the parties to create or reserve a right in the nature of a servitude or easement in the property granted, for the benefit of other land owned by the grantor, and originally forming with the land conveyed, one parcel, such right shall be deemed appurtenant to the land of the grantor, and binding on that conveyed to the grantee, and the right and burden thus created will respectively pass to and be binding on all subsequent grantees of the respective parcels of land. Cases have arisen where the owner of a large tract of land, for the purpose of providing an area in front of it to be kept forever open for securing its permanent use and enjoyment for dwellings, and excluding all offensive and noxious trades from the premises, has inserted covenants or conditions in his grants restricting the use of the land conveyed, so as to effect these objects. It has been held, in such cases, on the ground just stated, that each grantee of a part of the land subject to such restrictions, is bound to observe the stipulations in favor of other grantees of a part of the same land, and is entitled to claim a like observance in his own favor as against them. Nor does it make any difference that a party cannot maintain a suit at law to enforce the stipulation as a covenant or contract in his own name in such cases. A court of equity will give full effect to stipulations on the complaint of a party for whose benefit and protection as owner of the land, the stipulation was intended; *Hill* v. *Miller*, 3 Paige, 256; *Watertown* v. *Cowen*, 6 Paige, 415; *Barrow* v. *Richards*, 8 Paige, 351, 356, 360.

This class of cases is clearly distinguished from *Keppel* v. *Bailey*, 2 M. & K. 517. There was in that case no covenant or agreement between grantor and grantee as to the particular mode of using the estate granted, as a privilege or benefit to other land belonging to the grantor. The sole question was whether assignees of a lease were bound to perform certain covenants made by their assignors with owners of property, held by a distinct and independent title as to the use of such property by the assignees for certain purposes. The covenant was originally between strangers, having no privity of estate with each other, and there was nothing on which to found any right or privilege in the nature of a grant or reservation of an easement. The decision, however, in *Keppel* v. *Bailey*, has been severely

criticised in 2 Sug. Ven. 186–195, and the soundness of several of the *dicta* of the Lord Chancellor, and of his decision of the case, called in question by the learned author of that valuable treatise.

In the light of these principles and authorities, it is not material to the decision of this case to determine the precise nature of the clause in the deed to White, by which restrictions were imposed on the use and enjoyment of the estate now owned by the defendants. It is sufficient that the intention of the parties to the original deed to place restrictions on the use and enjoyment of the estate granted, is clear. The grantee, by accepting the deed and taking title under it, was bound to comply with its stipulations, so far as from their nature they were to be performed by the owner of the land, or created a right or privilege thereon in the nature of an easement in favor of his grantor, and those claiming under him. This deed was duly registered, and the defendants claiming title, derivative under the grant, have constructive notice of the stipulations, and are bound in equity to observe them.

The objection that the terms of the restriction are contrary to public policy, and in unreasonable restraint of trade, is not well founded. They do not restrict the alienation of the land. The owner of the fee can convey it at his pleasure. They do not tend to a perpetuity. The person who is entitled to the rights or privileges created and secured by the restrictions, can at any time release them. They do not impair the enjoyment of the property. Nor do such restrictions operate to impose any unlawful restraint of trade. While they are confined to separate parcels of land of limited extent, they are, at most, only a partial restraint of trade, and do not transcend the legitimate exercise of the right which every owner has to control and dispose of his own estate.

Upon the ground, therefore, that the plaintiff is the grantor in the original deed by which the land now owned by the defendants was conveyed, and is the owner and occupier of a part of the original tract, for the benefit of which the restrictions in the deed to White were inserted; that these restrictions were useful and beneficial to the enjoyment of the land of the complainant, and are in the nature of an easement or privilege in the land granted, reserved to the grantor, and are not unreasonable or against

public policy; that the defendants took their estate with notice of these restrictions, and are equitably bound to regard them in the use and enjoyment of their property, we are of opinion that the complainant can maintain this bill to enforce their observance, if she has not waived or relinquished the rights by her own laches.

But it is very clear that a suit in equity to compel a compliance with such stipulations concerning the use of property, must be seasonably commenced, before the persons in possession of the estate have expended money or incurred liabilities in erecting buildings or other structures on the premises. It would be contrary to equity and good conscience to suffer a party to lie by and see acts done, involving risk and expense, by others, and then permit him to enforce his rights, and thereby inflict loss and damage on parties acting in good faith. In such cases, a prompt assertion of right is essential to a just claim for relief in equity. In the present case the plaintiff can have no equitable relief to prevent the use or procure the abatement of the stable erected by White. Having stood by and permitted its erection, she cannot now invoke the aid of the court to enforce a remedy in equity for its removal. Where she has been guilty of further laches, so as to prevent her maintaining the bill against the defendants for acts done by them in enlarging the stable, can be determined only on a hearing of the facts bearing on the question. Nor can we decide in the present posture of the case, whether the erection of a stable is a "nauseous or offensive business" in the proper sense of those words as used in the deed to White. This is mainly a question of fact, to be determined on a view of the evidence relevant to the inquiry, and depending in some measure on the extent and mode of use of the premises by the defendants for the purposes of a stable.

The objection that the bill is multifarious, if originally tenable, is now obviated by the defendant's answer, that they have removed the railroad track and turn-table from the street or avenue, and entirely abated the same. This allegation may therefore be now deemed as stricken from the bill. Indeed, this objection is not included in their causes of demurrer assigned by the defendants. It does not appear by the allegations in the bill, that any person other than the plaintiff, has any right or interest in the en-

forcement of the agreements contained in the deed to White. Nor does it appear, except by an uncertain and remote inference, that there was any other grantor in that deed but the plaintiff.

Demurrer overruled.

Supreme Judicial Court of New Hampshire.

Rockingham.

MARCH ET AL. *v.* THE EASTERN RAILROAD CO. ET AL.

Corporation — Stockholders — Suit in equity — Jurisdiction — Judgment.

A minority of the stockholders in a corporation have a remedy in chancery against the directors and against the corporation, and all others assisting or confederating with them, whether individuals or corporations, to prevent them from making any misapplication of their capital or profits, which might result in lessening the dividends of stockholders or the value of their shares; if the acts intended to be done create what in law is denominated a breach of trust or duty.

Such stockholders have a remedy against individuals, in whatever capacity they may profess to act, and against corporations, both the one of which they are members, and all others acting in concert with it to effect and accomplish a common purpose and object, when the object thus to be accomplished is an imputed violation of a corporate franchise, or the denial of a right growing out of it, for which there is not an adequate remedy at law.

Therefore, when the allegations in the bill were that railroad A had leased and entered upon the track, fixtures, furniture, &c. of railroad B, for a term of years, and had agreed to pay to said railroad B, as rent, at stated times, a certain share of the income and profits of both roads: and also that such profits to a large amount had been received by said railroad A, and had accumulated for several years, said railroad A refusing to pay over said rent according to the terms of the lease, and claiming to apply such profits to the payment of investments, by them made, in stock of other roads, and in other schemes of speculation not warranted by the terms of the lease; and that said railroad B, and its directors, being influenced by persons interested in said railroad A, had declined to take measures to collect said rent of said railroad A, but were allowing and assenting to such improper and illegal application of the funds belonging to them, to which funds, said plaintiffs were, proportionately with other stockholders, entitled as dividends upon their stock; — *Held*, upon demurrer by said railroad A to the bill, that a minority of the stockholders in railroad B might maintain a bill against the directors of their own road, and their own corporation, and also against railroad A; the object of which bill was to prevent such alleged illegal misapplication of the funds, and to compel said Railroad A to pay over its dues to said railroad B, and to compel the latter road

to distribute them as dividends among its stockholders, the plaintiffs and others.

But in order to prevent a multiplicity of suits, and that justice may be done between all parties interested, such stockholders thus bringing their bill in chancery should set forth in the bill, that it is brought not only for themselves, but for all others similarly interested who may choose to become plaintiffs in the proceeding.

In the indentures by which railroad B leased their road, &c. to railroad A, there was an agreement to refer all matters of dispute that might arise between them upon the lease; — *Held*, that this agreement to refer not only did not oust this court of its jurisdiction at law or in equity, in a suit between the parties to such contract, but also that at the instance of a minority of the stockholders in railroad B, under the circumstances stated, this court might enjoin both said roads from entering into such reference according to said agreement, or, if entered into, from proceeding with such reference.

Though a contract be made and is to be performed in a foreign jurisdiction, a court of equity will enforce it, if they have or can acquire jurisdiction over the person or party.

This court has jurisdiction to render a valid judgment against a foreign corporation, whenever the corporation appears generally by attorney, or when legal service has been made upon it according to the provisions of our laws.

When the court has jurisdiction of the subject matter and of the parties to the suit, it will render its judgments without waiting to inquire whether either party have sufficient property within the jurisdiction to respond to such judgment; the question as to how his judgment shall be satisfied when he gets it, is for the party who obtains it, and not for the court.

The bill in this case alleged, —

1. That the Eastern Railroad in New Hampshire was duly incorporated by act of our legislature, June 18, 1836, and was duly organized.

2. That the plaintiffs are interested in said corporation as shareholders, owning stock severally as therein specified.

3. That by act of our legislature of July 2, 1839, said railroad was duly authorized to lease a part or the whole of it, and appurtenances, to such persons and on such terms as they should think proper.

4. That, in pursuance of this power, said railroad did, after having located its road on the 18th of February, 1840, lease all its road, rights, &c. to the Eastern Railroad Company, a corporation located in Massachusetts, and organized and established under the laws of that State, for the term of ninety-nine years, by indentures which are annexed to the bill.

5. That said Eastern Railroad Company, in and by said indentures, agreed to pay as rent for this property a share of the net profits at the same time it made dividends to

its own stockholders, which should bear the same proportion to the whole net profits that the stock in the New Hampshire road, at the time of such division, should bear to the whole amount of stock in both corporations.

6. That said indenture provided for the manner in which the net profits should be ascertained, and further provided that, if said Eastern Railroad Company should not deem it expedient to pay a dividend to its own stockholders, they should nevertheless pay to the Eastern Railroad in New Hampshire, semiannually, its ratable proportion of the net income.

7. And that, if any disagreement or difference of opinion should arise between the parties, it should be settled and determined by arbitrators selected as therein provided.

8. That said Eastern Railroad Company, under said lease, entered into and took possession of said Eastern Railroad in New Hampshire, and have since continued in possession, receiving rents and profits. But that, since July, 1854, it has refused to pay rent therefor. or any share of the net income, though they have received yearly large profits, and should have paid its share to the Eastern Railroad in New Hampshire, amounting to more than $800,000, after deducting interest on all its indebtedness.

9. That, at the date of the lease, the capital stock of the Eastern Railroad Company was $1,600,000, and its road was then nearly completed to the extent of its charter, and that its indebtedness was then, as stated by the directors, not exceeding $500,000.

10. That, since the making of said indenture, the Eastern Railroad Company have engaged in divers speculations not within the contemplation of the parties, and not within the powers conferred by the legislature, to wit: it has built the Gloucester, the Marblehead, the Salisbury, and the Saugus branches, all at a cost, as stated by them, of more than $700,000, which branches produce but little income; it has bought the South Reading branch at about $300,000, and the Essex Railroad, or a controlling interest therein, for more than $264,000, which latter produces but little income, while the former produces none, but actually increases its debt every year; that it has paid out $160,000 for worthless stock in the Great Falls and S. B. Branch Railroad and in the Grand Junction Railroad; and has changed its route into Boston at a cost of more than

$1,000,000,— all without authority, and in violation of said agreement.

11. That said Eastern Railroad Company for several years employed one Tuckerman as treasurer, and they claim to deduct $232,780.47 as lost by him in making up the net income.

12. That the capital stock of the Eastern Railroad Company is now $2,853,400, which increase has been caused almost entirely by the aforesaid expenditures, recklessly made, and without any benefit to either corporation, but only to some of the managers thereof, thus fraudulently increasing the amount of stock on which dividends are to be declared, without increasing the income.

13. That the debt of said Eastern Railroad Company has been largely increased by this useless and unauthorized expenditure to more than $3,000,000, and that, within four years past, they have paid of said debt from the net income nearly $900,000.

14. That, for the last five years, the directors of the Eastern Railroad in New Hampshire have been Ichabod Goodwin and D. P. Drown, both of Portsmouth, N. H.; S. A. Chase, of Salem; B. T. Reed, of Boston, and Isaiah Breed, late of Lynn, Mass., who, during that time, have made no attempt to collect said rent, but have always asserted that all the stipulations of the lease had been complied with by said Eastern Railroad Company.

15. That, at the annual meeting of the Eastern Railroad in New Hampshire, in July, 1858, an attempt was made to have rent collected, and a committee was appointed, who reported a large amount as due from said Eastern Railroad Company to said Eastern Railroad in New Hampshire, July 12, 1859, at their annual meeting.

16. That, at said last-mentioned meeting, persons interested to a much larger extent in the Eastern Railroad Company than in the Eastern Railroad in New Hampshire, controlled said meeting, and proceeded to choose for directors the same men above mentioned, except that Brown was put in place of Breed, who has small interests in the Eastern Railroad in New Hampshire, and that three of the five were largely interested and stockholders in said Eastern Railroad Company, and that none of them were, in fact, legally chosen, except Goodwin, though they were all declared so to be, being the same men, except Brown, who

had refused for five years to assert the rights of the Eastern Railroad in New Hampshire, and had asserted in that time that the Eastern Railroad in New Hampshire owed the Eastern Railroad Company a large sum, &c. and have, at the instance of the directors of the Eastern Railroad Company, attempted to impose other large debts on the Eastern Railroad in New Hampshire.

17. That the whole stock of said Eastern Railroad in New Hampshire is divided into 4,925 shares.

18. That each of the persons elected directors, as aforesaid, has expressed the opinion that the Eastern Railroad in New Hampshire has no claim upon the Eastern Railroad Company.

19. That plaintiffs hoped that said meeting would have been fairly conducted, &c. and the terms of the lease enforced and complied with. But the Eastern Railroad Company, and the Eastern Railroad in New Hampshire, (controlled as aforesaid,) and the said Goodwin, Brown, Chase, Reed, and Drown, combining, contriving, &c. controlled said meeting, and prevented the election of directors who would truly represent the interests of the stockholders in said Eastern Railroad in New Hampshire, and passed a vote putting the whole matter of enforcing the terms of the lease and collecting the rents in the hands of those deeply interested in and under the control of said Eastern Railroad Company.

20. That defendants pretend that there has been no net income within the true intent and meaning of the indenture, but plaintiffs charge that there have been every year large profits received by the Eastern Railroad Company which should have been paid over to the Eastern Railroad in New Hampshire, but which have been unjustly detained.

21. That defendants pretend that by the indenture aforesaid the two corporations are one and the same, and that thereby the Eastern Railroad in New Hampshire is bound by all the acts, &c. of the directors, &c. of the Eastern Railroad Company; but the plaintiffs charge that the Eastern Railroad in New Hampshire had no authority to make any other agreements than said lease, and that all the understandings were merged in said lease; that by said lease only the use of the property, &c. of the Eastern Railroad in New Hampshire passed, and that the rent received was a share of the net profits; and that when

profits are earned, the Eastern Railroad Company holds a part thereof in trust for the Eastern Railroad in New Hampshire and the stockholders thereof.

22. That the defendants pretend that they will in good faith appoint arbitrators to settle all matters of claim under the lease, but plaintiffs fear that, under the circumstances stated, they will assent to a wrongful disposition of the funds, and charge that said directors only intend to have a fraudulent reference, under the control of the Eastern Railroad Company, so as to bar the rights of the plaintiffs.

23. The plaintiffs pray for an answer, and that the books of said Eastern Railroad in New Hampshire may be produced by said Drown, the clerk thereof, for an account of the sums due from the Eastern Railroad Company to said Eastern Railroad in New Hampshire, as rent according to the terms of the lease, to be paid by the decree of this court to the Eastern Railroad in New Hampshire, to be distributed according to law, or that the proportion thereof belonging to these plaintiffs be paid over to them, with interest from the time it became due; that in rendering such account the Eastern Railroad Company may be prohibited from deducting anything for losses by defalcation of its officers, interest, or other charges not within the true meaning and intent of the lease, and that in such adjustment said Eastern Railroad Company may be allowed only the amount of capital stock issued by them at the time of making the lease, with such slight additions as were then contemplated, and that the defendants may be restrained from making any settlement of the matters in controversy, or from entering into any reference or arbitration of them without leave of court, and for further relief, and for process.

To this bill the Eastern Railroad Company demurred, and the other defendants filed an answer, the substance of both of which appears in the opinion of the court.

Sargent, J. — As we are not to decide this case upon the bill and answer as between any of the parties, but all the questions raised thereon are still open, and to be considered and settled upon their merits hereafter, it is not material to consider the answer of those parties who have made one, in order to settle the questions now before us. This answer has therefore been omitted in stating the case, except so far as it objects to the jurisdiction of this court,

and this portion of the answer is stated only because it contains substantially most of the positions relied upon by the Eastern Railroad Company to sustain their demurrer, though some other positions are taken in argument, such as that there are not proper parties to the bill, &c. So also the provisions of the lease are omitted in the statement of the case, except such portions as are stated in the bill, which appear to be substantially correct. In considering the questions now before us, which are only those raised by the demurrer of the Eastern Railroad Company, we are to take the facts as stated in the bill to be admitted. The questions raised by this demurrer seem to relate solely to the jurisdiction of the court, and though some of the positions relied upon are taken under the first cause assigned in the demurrer, others are evidently taken under the second cause, as there stated.

It is claimed by the Eastern Railroad Company, —

1. That this court has not jurisdiction over the Eastern Railroad Company, a foreign corporation existing without the limits of this State.

2. That the contract, as set forth in the bill, was to be performed in Massachusetts, and therefore the court has not jurisdiction of the subject matter.

3. That the jurisdiction of the court is ousted by the agreement to refer or arbitrate, contained in the indentures.

4. That the Eastern Railroad Company is not answerable to the stockholders of the Eastern Railroad in New Hampshire, but only to the corporation.

5. That the plaintiffs have a full and perfect remedy at law by mandamus, and therefore this court has no jurisdiction.

6. That there are no proper parties to the bill, so as to give the court jurisdiction.

And in considering these questions it may be convenient to transpose their order, and begin with the last.

I. Are these plaintiffs proper parties to commence and prosecute these proceedings? It is suggested in the argument that the bill should be dismissed because the other stockholders are not made parties. But it is well settled that when the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill in behalf of themselves and others having a

like interest. But in all cases where one or a few individuals of a large number institute a suit on behalf of themselves and others, they must so describe themselves in the bill. This rule applies to shareholders in a corporation as well as a private company or partnership. Daniel Ch. Pr. 290, 291; Story Eq. Plea, 107, 109, 110, 111, 113, 115; *Wallworth* v. *Holt*, 4 Mylne and Craig, 635; Brightly's Eq. Jur. 529; Adams's Eq. 319, 320. Nor is this in contravention of the general rule that in equity all persons must be made parties who have an interest in the result. But where the parties are very numerous, as a matter of convenience, and to prevent abatements by death, and the non-joinder of unknown parties, the court will permit a few to represent the whole; but in that case the bill should expressly state that it was filed as well on behalf of other members as of those who are really made complainants. Edwards on Parties, 40.

A shareholder in an incorporated company may file a bill in behalf of himself and all the other stockholders to restrain the directors from committing a breach of trust, as by making a contract of guaranty in behalf of the corporation which they were not empowered by the charter to make, or committing other clear excess of chartered powers. *Colman* v. *Eastern Co. R.* 10 Beavan, 1; A. & A. on Corp. § 312, and cases cited.

It is now no longer doubted, either in England or the United States, that courts of equity in both have a jurisdiction over corporations, at the instance of one or more of their members, to apply preventive remedies by injunction, to restrain those who administer them from doing acts which would amount to a violation of charters, or to prevent any misapplication of their capital or profits which might result in lessening the dividends of stockholders, or the value of their shares, as either may be protected by the franchises of a corporation, if the acts intended to be done create what in the law is denominated a breach of trust. And the jurisdiction extends to inquire into and to enjoin, as the case may require that to be done, any proceedings by individuals, in whatever character they may profess to act, if the subject of complaint is an implied violation of a corporate franchise, or the denial of a right growing out of it, for which there is not an adequate remedy at law. *Dodge* v. *Woolsey*, 18 Howard U. S. 341, and cases cited.

And in *Robinson* v. *Smith*, 3 Paige, Ch. 233, a principle is laid down that seems applicable to this case as here stated by these complainants. If the directors of a corporation refuse to prosecute by collusion with those who had made themselves answerable by their negligence or fraud, or if the corporation was still under the control of those who must be made the defendants in the suit, the stockholders, who are the real parties in interest, would be permitted to file a bill in their own names, making the corporation a party defendant. And if the stockholders were so numerous as to render it impossible or very inconvenient to bring them all before the court, a part might file a bill in behalf of themselves and all others standing in the same situation. See also *Cockburn* v. *Thompson*, 16 Vesey, Jr. 321; *Good* v. *Blewitt*, 13 Vesey, Jr. 397; *Whitney* v. *Mayo*, 15 Ill. 251; *Wood* v. *Draper*, 24 Barb. Sup. Ct. 187, and authorities cited.

The effect of this proceeding in this way is to avoid the very multiplicity of suits complained of, for every stockholder, no matter in what jurisdiction he resides, may, if he please, in some way become a party to this proceeding without commencing a new suit either in his own or any other jurisdiction; nor are any of the stockholders left out and not made parties to this proceeding, as the defendant complains, because not only the directors as individuals, but the Eastern Railroad in New Hampshire, are made parties as defendants, and those stockholders in this last mentioned road who do not desire to come in as plaintiffs here, are of course represented by and in the corporation as defendants. All the stockholders who are satisfied with the proceedings of the directors, either from the fact that they have a greater interest in the Eastern Railroad Company than in the New Hampshire corporation, or from any other cause, are represented here as members of the corporation, and under the corporation which is made a party; but all those whose interests are adverse to those of the corporation, as now managed and controlled, and who do not wish to be defendants, as members of the corporation, can, in this mode of proceeding, become plaintiffs if they wish. If these plaintiffs had omitted to make the corporation of which they are members a party defendant, then there would be reason for the position assumed, that all the stockholders are not parties. But all are either actual

parties to the record, or are properly represented by those who are parties, and may become plaintiffs if they are dissatisfied with their position as defendants as members of the company.

II. The position that a mandamus would be an adequate remedy at law, and that, therefore, these proceedings are unauthorized, does not seem to be relied on by defendants' counsel, as it has not been alluded to in their argument. How would a mandamus meet the difficulty here complained of? Plaintiffs complain that they do not get their dividends, but they admit that the Eastern Railroad in New Hampshire has nothing to divide, and can divide nothing. The complaint is that the dues of the company are not collected, and they seek a remedy for that difficulty; yet how can this court compel, by mandamus, the Eastern Railroad Company to pay over, if the court has no jurisdiction of said company in the present proceeding?

But suppose they have jurisdiction, and issue the mandamus to that company. They have nothing in their hands, as they say, to pay over, and the Eastern Railroad in New Hampshire and their directors say the same. How could the court, as a court of law, order one corporation to pay over any money to another, when the corporation ordered to pay denied the indebtedness, and the other to whom the money was to be paid admitted there was nothing due and made no claim? The complaint and fear of these plaintiffs is, that the business will be so managed between these corporations, which are both alleged to be managed and controlled by the same interest, that their remedy will be forever defeated. We see no reason, if the facts shall prove as stated in the bill, why the case is not a proper case of equity jurisdiction, and one for which, at common law, there is no adequate remedy.

III. The next objection, that the Eastern Railroad Company is not answerable to the stockholders of the Eastern Railroad in New Hampshire, but only to the corporation, is not urged in the argument, and we are unable to see any ground upon which it can rest, for it is difficult to see why, if the court have jurisdiction over that corporation as well as the one in New Hampshire, that company as well as the other should not be held to answer to these plaintiffs, since the charge is that the Eastern Railroad Company, together with the Eastern Railroad in New Hampshire, representing

a majority of its stockholders who are alleged to be in the interest of the Eastern Railroad Company, and the directors of the New Hampshire road, are all together, and by common consent and with one common design and purpose, under color of a contract between the two roads, illegally and in law fraudulently misapplying the funds belonging to both corporations in such a way as not only to lessen but absolutely destroy all the profits of the Eastern Railroad in New Hampshire, and swallow up all its income, to the injury of these plaintiffs, when, but for such illegal misapplication, there would be large amounts due from said Eastern Railroad Company to the Eastern Railroad in New Hampshire, to which they would be entitled proportionately with other stockholders as dividends according to the true intent and meaning of the indentures between them. Why then, are they not both answerable alike to these plaintiffs, if either is so answerable? And there would seem to be something strange in the position that these plaintiffs have no claim on this rent, except through the Eastern Railroad in New Hampshire. The plaintiffs' position is that these two roads are combining to cheat them, by an arrangement between themselves, of a fund which they hold in trust for the benefit of plaintiffs and others. Plaintiffs ask that an account may be taken of this fund, and the Eastern Railroad Company may be ordered to pay its share to the Eastern Railroad in New Hampshire, and the latter required to divide it to the plaintiffs and others interested. Now if the facts are so—and in considering this question upon the demurrer they are to be assumed to be so—would not the plaintiffs have some claim for relief as well against the one company as the other?

IV. Is the jurisdiction of this court ousted by the agreement to arbitrate contained in the indentures? An agreement to refer any matter in dispute that may hereafter arise between the parties, is not unusual in contracts of insurance, of partnership, or for the construction of buildings or other works. But such agreements do not bar the parties of their remedies, either by action at law or by suit in equity, upon such contracts, neither will such agreements be specifically enforced in equity. *Smith* v. *B. C. & M. R. R.* 36 N. H. 487, so that this objection would be without weight, if this were a proceeding between the parties to the indenture. Either party might commence and maintain

an action or a suit in equity upon the indenture against the other party thereto, notwithstanding this agreement to refer; much less can these plaintiffs be barred from maintaining this suit by an agreement to which they are not parties, but which has been made between the two defendants. We have seen that these plaintiffs are proper parties, bringing this bill in behalf of themselves and all others, stockholders in the New Hampshire road, who may wish to join them against both these railroad corporations. The agreement to refer is between two co-defendants. And can agreements between two adverse parties bind these plaintiffs, or preclude them from resorting to their equitable remedies for redress? It therefore becomes immaterial to inquire whether these companies had, before the bringing of this bill, agreed in writing upon an arbitration, and appointed arbitrators, as is suggested in the argument of counsel, or not until afterwards. If it had been done before the filing of this bill, it could make no difference. Two referees only have been agreed on, while three are required. No hearing has been had and no notice given of any. And if it would be unjust to allow a reference to be entered into by unfriendly directors, by which the plaintiffs' rights should be in effect definitively and forever settled in their absence and without a hearing, it could not be less unjust to allow such a reference to proceed under the circumstances stated. And that it would be unjust to allow it to be entered into, is apparent when we examine the nature of the claim which these plaintiffs set up. They claim to be stockholders in the Eastern Railroad in New Hampshire, that the Eastern Railroad Company are bound by contract to pay semiannually certain rents to their road, which the directors of that road are bound to divide and pay over to them and others; that from some mistake or misapprehension, or from wrong intentions, the directors do not collect this rent, though a large amount of it is due, and has been for some five years accumulating, but that the directors are disposed to yield to the unjust claims of the Eastern Railroad Company, and give up said rent to them, to the injury of the plaintiffs and others. The plaintiffs also say that these directors openly avow that they are of opinion that there is no just claim for rent, either on the part of the Eastern Railroad in New Hampshire or these plaintiffs, and the plaintiffs are desirous that this question

should not be settled by those who have no faith in their claim, and who would be willing to admit it all away, and must necessarily do so if they were to take the same positions before the referees that they have heretofore done; nor by referees selected by them, and before whom the plaintiffs and other shareholders would have no claim to be heard. And it is against any liability to have these claims thus improperly and unfairly adjudicated, that they ask the interference of this court; and if they are entitled, as they allege, to 406 shares out of the 4,925, the whole amount of shares in that corporation, thus owning nearly one twelfth of all the stock, to say nothing of those who have come in as plaintiffs the present term, it would seem that they ought to have a hearing somewhere before the question is finally decided against them.

It is insisted that this agreement to refer is of the essence of the contract, an ingredient and consideration of it, and that it amounts to a waiver of the right to sue either at law or in equity. It is not to be denied that this agreement was an ingredient and consideration of the lease, and it may have been an important ingredient and consideration of it, but it can hardly be correctly said to be of the essence of the contract. It is merely incidental and collateral. It may be struck out, and the contract, in all its essential parts and features, would not be affected. By law, such an agreement does not amount to a waiver of the right to sue upon the contract, even as between the parties to it. But suppose it were otherwise, and that all the defendants' positions in regard to this agreement to refer were correct, what consequence would result in this case? Neither of the parties to the indenture have commenced suits at law or in equity, nor have they any desire to do so. One cause of complaint is, that they are too willing to refer, and that they are contriving, by means of such a reference, to cheat the plaintiffs of their shares of a fund, which the one corporation holds, but which, in justice and equity, belongs to them, and which they cannot reach in law without the aid of the other; and if the Eastern Railroad in New Hampshire were barred to sue at law or in equity, it would not follow that the plaintiffs may not seek their redress in court.

V. That the contract set forth was to be performed in Massachusetts, or, in the words of the demurrer, "that the

supposed causes of suit, and each and every of them, (if any such have accrued to complainants,) accrued out of the jurisdiction of this court, that is to say, within the Commonwealth of Massachusetts." It does not appear from anything in the bill or the indentures, where the contract was made, or where the indentures were signed, or where the contract was to be performed in any particular, except at the close of the first article of the agreement, in said indentures, where it is stipulated that the rent which was reserved to the Eastern Railroad in New Hampshire shall be paid to the Treasurer thereof, who shall demand and receive the same at the place of residence of the Treasurer of the said Eastern Railroad Company. But it is not shown nor stated whether the residence of the treasurer of said company is in New Hampshire or in Massachusetts, nor is there anything before us to show how that fact is. But in our view that is wholly immaterial.

1. Let us suppose that this contract was made in Massachusetts, and by its terms was to be performed there. Does it follow that no action could be maintained upon it in any other jurisdiction, if both the parties are properly there? That cannot be claimed, for it is well settled that actions founded upon contracts are transitory, though made and even stipulated to be performed out of the kingdom. To be sure, the general rule is to be applied in such cases, that the *lex loci contractus* is to govern in the interpretation of the contract, but an action or bill in equity may be brought upon the contract anywhere, where the parties are or can be made subject to the jurisdiction of the court. *Debitum et contractus sunt nullius loci.* Broom's Leg. Max. 414, note 1; Smith's Lead. Cas. 340; Story's Conf. Laws, § 362, p. 299.

2. But it is said that the property on which the decree of the court is to operate, if obtained, is not in this jurisdiction, and therefore the court cannot act. Now suppose this to be so. Suppose there is some specific fund out of which the money claimed by these plaintiffs must be paid, if paid at all, and that fund and the person having the charge of it, and whose duty it would be to pay it, are all out of the territorial jurisdiction of the court; that makes no difference, provided the court has or can acquire jurisdiction of the parties themselves. For where the property is not within the jurisdiction, but the party sued as defen-

dant is within reach of their process, a court of equity will take jurisdiction and compel the party to do right by remedies directed against his person. *Gt. Falls Co.* v. *Worster*, 23 N. H. 462, and cases cited. But these principles really have no application to this case, because the facts are not as we have above supposed. There is here no specific fund from which payment of this claim must be made, if made at all. Here the bill, as far as the Eastern Railroad Co. is concerned, is for the enforcement of a merely personal contract for the payment of money, and whether these plaintiffs seek to recover, on the ground of fraud, of trust, or of contract, it is entirely immaterial, since upon either ground they stand well in a court of equity. For in cases of fraud, trust, or of contract, the jurisdiction of a court of chancery is sustained wherever the person be found, although lands not within the jurisdiction of that court be affected by the decree. *Massie* v. *Watts*, 6 Cranch, 148. The Court of Chancery has jurisdiction to enforce the performance of contracts made between foreigners, and in a foreign country, although the defendant is only temporarily within the jurisdiction of the court at the time of the service of the process upon him. *Mitchell* v. *Bunch*, 2 Paige, Ch. 606. But from the facts stated in the bill, it would seem that there was no lack of property of the Eastern Railroad Company within the jurisdiction of the court by means of and upon which the orders and decrees of the court might readily be enforced. There is a class of actions in their nature local, because of the peculiar nature and situation of the property which is the subject matter of litigation, and in such cases courts of equity take jurisdiction of the suit, because the property is within the jurisdiction, though the person to be affected is elsewhere, and though no jurisdiction has been acquired over such person. In such cases the courts are said to enforce their decrees *in rem*, and not *in personam*. But the case before us is far from coming within that class of cases.

3. But suppose that all the positions of the defendant were correct, as to the contract being made and to be performed in Massachusetts, and that, therefore, the court had not jurisdiction to enforce the contract, and that the property or fund to be affected by the decree of the court was without the jurisdiction, and that therefore the court could not be asked to enforce the contract as between the parties to

it; yet these plaintiffs still might stand well enough here, as the foundation of their claim is not upon the contract entered into between the two defendant companies, as these plaintiffs were no parties to that contract. But they are seeking redress of these defendants, because they have misapplied the funds in their hands, and appropriated them for illegal purposes, contrary to equity and good conscience, and contrary to the terms of the agreements, even between the defendants themselves, whereby the plaintiffs are deprived of their share of the rents and income which equitably belong to the New Hampshire road, but which the Eastern Railroad Company have either fraudulently expended, or else now hold in trust for the benefit of these plaintiffs and others interested. So that these plaintiffs do not stand in the position of a party to a contract, trying to enforce that contract in court, but in vindicating their own rights, they ask that the defendants may be held liable at least to the extent that their own contracts, voluntarily entered into between themselves, and to which plaintiffs were no party, would make them when those contracts shall be legally and equitably interpreted and applied.

4. It is contended by defendants' counsel in argument, that courts of equity decline to act, unless the entire thing, the whole subject matter upon which they are to act, or the persons or organizations which control the thing in litigation, are within the reach and under the control of the court; that the actual and available power of a court of equity must be commensurate with the subject matter in litigation, and the rights of all the parties in interest, before it will act at all; that it acts for all, or none; that it will dispose of the whole matter, or do nothing. No authority is cited for this position. We apprehend that the court do not inquire how far it would be in their power to render complete justice to the parties by their final precept. If the parties and the subject matter of the controversy are within their jurisdiction, they will not decline to act because the amount in controversy is large, and the amount of property within reach of the execution is small, the residue of the property of the defendant being in another government. The question as to how his judgment shall be satisfied, when he gets it, is for the party who obtains it, and not for the court.

VI. Has the court jurisdiction over the Eastern Railroad Company, a foreign corporation? This is the question upon which more stress is laid, perhaps, than upon any other position taken, and in practice it is no doubt a question of much importance.

It belongs to every government to regulate the rights, the status, and condition of its own subjects. Courts of other jurisdictions are not bound, except by what is called comity, to regard the laws elsewhere established, but justice cannot be administered without some regard to those laws, because the law of the country constitutes an essential element and part of every contract, a limit to every right and an ingredient in every controversy. It is therefore settled in all the countries of the common law, that the laws of a government, where a contract was made or a transaction occurred, will be regarded if they are material and brought to the notice of the court. There are some exceptions to this rule not material here to be considered.

Corporations exist everywhere. They are artificial persons, constituted by the laws, consisting of one or many persons, who are vested with the power of holding property, transacting business, maintaining suits in a corporate name, without mention of the names of the individuals of which it is composed, and without their rights or their remedies being affected by changes of the persons who are, from time to time, the members of the corporation.

No necessity exists for the recognition, by one State, of these artificial persons, created by the government of another. But as corporations are but companies of individuals, acting under a corporate name, the only effect of a refusal to recognize foreign corporations as such would be, to drive them to hold their property and maintain their rights in the names of the individuals of which the corporation was composed. The corporation would be compelled to allege that they were partners, doing business in a common name or firm, and they must be treated as a firm or partnership. Over such a firm, composed of members residing in another jurisdiction, it is clear that our courts would have jurisdiction, as they have of the individuals who compose it, whenever they come into our courts for redress of their own grievances, or when they or any of them come here, so that they may be served with our process, or when they have property here, which, by our laws, may be made

amenable to the decisions of our courts, to the extent at least of that property, and of any property of theirs which may be afterwards found in our jurisdiction.

It would not, of course, be presumed that in recognizing the personal and corporate character of a company established in another jurisdiction, any court would do so at the expense of holding that thereby such a company of individuals would be exempted from the jurisdiction of our courts as defendants, while they had the rights of persons as plaintiffs. If such bodies are recognized here as persons, with the rights of persons, it is clear that it must be so subject to the liabilities of persons. If they can sue in our courts, they must be liable to be sued by others, and they must, in this respect, stand on the same ground as the distinct individuals who compose the corporation. If they come within the reach of our process, they may have suits against them, and all their property found in this jurisdiction will be made to respond to the judgment that may be recovered against them.

A foreign corporation is permitted to sue in the courts of England. *Henriques* v. *Dutch West India Co.*, 2 Ld. Raym. 1,532. So a foreign corporation may sue in the federal courts of this country. *Society* v. *Wheeler,* 2 Gall. 105. The same has been held in most of the States of this Union, though not in all. 2 Kent. Com. 285, and cases cited; A. & A. on Corporations, §§ 372–5. *Bank of Augusta* v. *Earle,* 13 Peters, 519. Such is the law in this State.

And as a foreign corporation can sue in our courts, there would seem to be no reason why it should not be liable to be sued here in the same way that a domestic corporation could be. It was said to be the rule of the common law, that process against a corporation must be served upon its head or principal officer, within the jurisdiction of the sovereignty where this artificial body exists. But there would seem to be no satisfactory or substantial reason why the technical rules of the common law, respecting suits against corporations, should not, like many other rules respecting them, be so far modified and made to yield, as to correspond with the present state of things, and to accomplish the ends of justice, by making the property of an absent corporation liable to attachment in the same manner as the property of other absent debtors. If a foreign corporation, say an insurance company in Boston,should establish its

president in New York, for the express purpose of making contracts, and should also have property there, it might seem strange if the President could not be summoned there to answer to a debt contracted there by him, in the corporate name, and that a *distringas* could not be allowed to issue against the corporate property. A. & A. on Corp. sec. 402.

And we find that in this State foreign corporations were early recognized as having the same rights as domestic corporations. In *Lumbard* v. *Aldrich*, 8 N. H. 33, it was held that a corporation, created by the laws of one State, may maintain a suit in the courts of another State, and if authorized by charter to hold real estate, it may take and hold land in this State; and as early as 1825, a statute was passed, providing "that when any body politic or corporate are sued in this State, who have no clerk or member residing therein, on whom service can be made, an attested copy of the writ shall be delivered to the agent, overseer, or person having the care or custody of the corporate property, or part thereof, in this State, thirty days, . . . which shall be a good and sufficient service of said writ." This statute would seem to have been made with a view to avoid the difficulty before alluded to, as existing at common law, in consequence of the rule that the process must be served upon the principal officer of the corporation in the foreign jurisdiction; and not only so, but it provided a convenient way of making legal service upon a foreign corporation, which might have either property or officers within our jurisdiction. And in *Libbey* v. *Hodgdon*, 9 N. H. 394, it was distinctly held that a foreign corporation may be sued in this State, if service can be made upon its agent or its property. In the last case, WILCOX, J. says: "If upon principles of law or comity, corporations created in one jurisdiction are allowed to hold property and maintain suits in another, it would be strange indeed if they should not also be liable to be sued in the same jurisdiction. If we recognize their existence for one purpose, we must also for the other. If we admit and vindicate their rights, even-handed justice requires that we also enforce their liabilities, and not send our citizens to a foreign jurisdiction in quest of redress for injuries committed here. There may be difficulties in procuring legal service of a writ upon a foreign corporation; and so in case of an individual resid-

ing in a foreign jurisdiction, it may be difficult or impossible to procure such service of process upon him as to subject him to the jurisdiction of our courts. But in either case, when the service can be made, or when the person or corporation appears and submits to our jurisdiction, we see no objection to the authority of the court to proceed."

There seems to be nothing in the character of a corporation to prevent its suing or being sued like a natural person. It is in legal contemplation having existence, invested with rights and subjected to liabilities, and very properly a party to proceedings in courts of law or equity, whenever their rights or liabilities are drawn in controversy. So in Vermont, it has been held that an action can be sustained against a foreign banking or other corporation. *Day* v. *Essex Co. Bank*, 13 Vt. 97. In that case, REDFIELD, J. says: "We can see no very good reason why artificial persons shall not be liable to suit, in the courts of another State, as well as natural persons. It is not necessary to inquire how far public or municipal corporations could be held to answer suits in a foreign jurisdiction." The same doctrine has been held in Missouri. *St. Louis Ins. Co.* v. *Cohen*, 9 Missouri, 417, 441.

And although a corporation, existing by the laws of one State, cannot be deemed to pass personally beyond the limits of that State, and although service upon a foreign corporation might not be good, if only made upon some one of its officers, passing through or casually in this State, yet if they can appoint and have agents and attorneys, who can legally appear for them, and in their behalf, to prosecute in our courts a claim to final judgment, it would be strange, if, when they are called to defend a suit against them, and service has been made upon such agent, according to law, and he or the attorney appears, that a judgment against them should not be as valid as the one rendered in their favor. Suppose a foreign corporation should sue in our courts, by attorney, and after a protracted litigation, should fail in their suit, no one could doubt the authority of the court to render a judgment against them for costs. And suppose the suit is brought against the corporation, and the same attorney appears, could there be any more doubt of the authority of the court to render judgment against the company as defendants? And suppose service to be legally

made upon the agent of the corporation, and they should not appear, would not a judgment, rendered against them upon default, be equally valid and binding? "The inquiry is not, whether the defendant was personally within the State, but whether he, or some one authorized to act for him in reference to the suit, had notice and appeared, or, if he did not appear, whether he was bound to appear or suffer a judgment by default." *Lafayette Ins. Co.* v. *French*, 18 Howard, U. S. 404.

In many of the States there have been legislative enactments, requiring foreign corporations to appoint resident agents, on whom service of process may be made, in order to entitle them to transact business within the State. But the service upon such agents, in those cases, could be no more effectual in giving the courts jurisdiction, than under our statute would be the service upon a principal member or the agent, &c. having the control and care of the corporate property or part thereof.

And that a judgment rendered in our State against a corporation, chartered in and by another, where there has been such appearance or such service, will be respected in the State, by which such corporation was chartered, and in which it is situated, seems to be well settled. *Ocean Ins. Co.* v. *Portsmouth Marine Railway*, 3 Met. 420; *Moulin* v. *Trenton Mut. Life and Fire Ins. Co.* 1 Dutcher, 57; *Lafayette Ins. Co.* v. *French*, 18 Howard, *ante.*

In the present case the defendant corporation appears, and an appearance of the party has always been held to confer jurisdiction, *Downer* v. *Shaw*, 22 N. H. 281, except where the party appears for the sole purpose of making objection to the authority of the court to proceed. *Wright* v. *Boynton*, 37 N. H. 9. Here, the appearance is clearly not made for this sole purpose, since the second ground of demurrer is in terms "that the said complainants have not, by their said bill, made such a case as entitles them, in a court of equity, to any discovery from these defendants, or to any relief against them, as to the matters contained in said bill or any of such matters." So that it would seem that the court have jurisdiction from this circumstance, that here is a general appearance for all purposes, the objections to the jurisdiction of the court over the party defendants filing the demurrer, being only taken in connection with others, going to the merits of the bill.

It will also be observed that the demurrer is not in the nature of a plea in abatement. It is not alleged that the Eastern Railroad Company have not been properly notified, that they have not been served with proper process and in a proper way, and that thereby they are not properly and legally before the court, for the decision of any question which the court can properly decide. Upon such a state of facts, it might probably be safely enough assumed, that there has been such a service of process upon the Eastern Railroad Company, as would legally and properly subject them to the jurisdiction of the court, so that a judgment upon default would have been valid and binding upon the defendant company, and could be enforced upon any property rights or franchises of theirs within this jurisdiction.

Taking the bill therefore *pro confesso*, as far as the questions raised by this demurrer are concerned, we can have no doubt that the plaintiffs are entitled to some relief as against the Eastern Railroad Company.

The demurrer is therefore overruled, and said company is ordered to file an answer to plaintiffs' bill in ninety days.

James W. Emery, and *Wm. H. Rollins*, solicitors for complainants.

Ira Perley, *W. H. Y. Hackett*, and *George M. Browne*, solicitors for respondents.

Supreme Court of Vermont. August Term, 1860.
Washington County.

BROWN *v.* GLEED.

Trover — Attachment on mesne process — Agreement between debtor, creditor, and officer.

This was an action of trover for not restoring property bailed by an officer, who had attached the same on mesne process, on the ordinary officer's receipt. The defence consisted in an offer to prove, by oral testimony, that, at the time of giving the receipt, it was understood by the officer, and the debtor and creditor, that the arrangement was made with a view to enable the debtor and his other

creditors to realize more from the sale of the property at retail, it being a store of goods, than could be done by a sale at auction, in the ordinary mode. The defence, therefore, insisted that the receiptors were not liable in this form of action.

BY THE COURT.—It is well settled in this State, and in most other States where this form of contract is in use, that it is to be treated the same as other contracts in regard to the conclusiveness of its stipulations; that it imports an absolute duty to restore the property on demand, or pay the stipulated value of it; and that for a failure to comply with this obligation, the receiptors are liable in trover. The circumstances of this case clearly indicate that this was the expectation of the plaintiff who made the attachment, and of the creditors primarily interested in it, at the time the property was bailed; and to admit the defence offered, would be a perversion of the purpose of the contract, in a manner not expected by any of the parties at the time of making the contract.

BATES *v.* MARSH.

Tenant in common — A pretended right no conversion.

Where the defendant, a stranger, having no title to personal property, claimed to be a tenant in common of one half, and sold such pretended share to another, who did own one half the property in common with the plaintiff, and the other tenant in common was thereby induced to carry the property out of the State, under a claim of being the owner of the whole property,—

Held, that this did not amount to a conversion of the plaintiff's interest, either in the defendant or the other cotenant, inasmuch as it did not affect the plaintiff's title to the property, and did not affect the possession or use of the same, beyond what the other cotenant might lawfully do, independent of the purchase of this pretended claim of defendant. There was therefore no actual wrong perpetrated, either upon the possession or property.

HOLMES *v.* CROSSETT.

Promissory note — Oral evidence — Written contract.

This was an action of assumpsit on a promissory note. The defence consisted in an agreement in writing, signed by

the plaintiff and some of his other creditors, by which it was stipulated that no suit should be brought by any of them, upon any claims they held against the defendant, until after a date later than the commencement of this action. The plaintiff offered to show, by oral evidence, that it was understood by all the creditors who signed the agreement, that it was not to take effect, or become binding, until signed by all the defendant's creditors, which was never done.

Held, that this evidence was admissible for the purpose of showing that the writing never was so delivered as to take effect as a binding contract; and that the evidence did not therefore tend to contradict or vary the legal effect of the writing.

MOODY *v.* CROSSETT.

Evidence — Declarations.

This was a similar action to the preceding, in favor of another creditor of the defendant, where a similar defence was relied upon. The plaintiff, for the purpose of showing the terms upon which the agreement was to take effect, offered the declarations of the defendant made to other creditors after the paper had been signed by the plaintiff, that it was not to take effect or become binding until signed by all his creditors.

Held, that the evidence was competent for that purpose, on the ground that the declarations were equivalent to saying that the agreement or understanding, as to when the contract should take effect, was the same with all the signers, and that what was said therefore to the other creditors to induce them to become signers was the same as if said to the plaintiff; and that it was not subject to the same exception as if the contracts with the different creditors had been separate and distinct from each other.

TEMPLETON *v.* BASCOMB.

Verbal renewal of a claim — Statute of Frauds — Consideration.

The plaintiff had a legal claim against the estate of the defendant's father. After the decease of the father, the defendant saw the plaintiff, and recognizing the validity of plaintiff's claim, told him to give himself no trouble, he would see it paid. The plaintiff suffered it to lie, upon that

assurance, until the estate was settled and the property assigned to the defendant, when he declined to pay plaintiff, insisting that his promise was without consideration; and if not so, it was within the Statute of Frauds.

Held, that the defendant's undertaking was upon sufficient consideration, and that such consideration being new, and independent of the original debt, and moving between the parties to the new promise, such promise was not collateral, but original, and so not within the Statute of Frauds.

NORTHFIELD *v.* VERSHIRE.

Determining place of residence — Confinement in jail.

Held, that a person, whose settlement is now in question, may derive such settlement from his grandfather, notwithstanding neither the pauper nor his father ever gained a settlement, in his own right, within the State.

Held, also, that for the purpose of determining the place of settlement, as affected by residence, the time of one's confinement in jail, under a charge of crime which is bailable, may be added to the prior residence in the same town where he had his domicil, at the time of his arrest, and where his wife remained during such imprisonment, although not living at the same house where the husband resided before his arrest, but with her father, in the same town.

ELLIS *v.* BRIGHAM.

Courses and distances — Highways — Obstructions by owner of adjoining lands.

A peat road is sufficiently defined "by courses and distances," if laid upon the line of a lot of land which is defined by courses and distances. A reference to "the corner of a lot opposite a certain garden," is a sufficient description of the starting-point of a highway.

When a highway is, in fact, wrought and laid open for public travel, for years, it is not necessary to its legal existence, that it should be shown that it was laid open for use by the selectmen of the town in the manner pointed out by the statute, or that any certificate of its opening should ever have been lodged with the town clerk, in conformity with the requirements of the statute.

When a highway is obstructed by the owner of the adjoining land, without legal justification, those entitled to

the use of the road are not liable to an action, at his suit, for throwing the obstructions upon the land without the limits of the highway.

BRICKETT, DENNISON & CO. *v.* SPALDING.

Promissory note — Presentment — Protest — Notice.

A promissory note, made payable "at any bank in Boston," may be presented at any bank within the city which the holder may elect, and payment demanded of the officers of the bank, and protest and notice thereupon to the indorsers will be sufficient. If the maker desires to restrict the place of presentment, he should give notice where he desires to make payment; or else require the holder to elect where he will receive payment.

BROWN *v.* GODFREY.

Compensation for services of officer not illegal, when not within the range of his official duty.

This was a claim for services and expense in bringing a fugitive from justice, from the State of Connecticut into this State, on the complaint of the defendant, and the information of the State's attorney, and the requisition of the governor of the State. The plaintiff was, at the time the defendant applied to him to do the service, a deputy sheriff of this county. He declined going upon the errand unless the defendant would see him paid, which he promised to do.

After the person was brought back into the State, and an inquiry was about to be had before a magistrate, in regard to the offence charged, which was the uttering forged paper to the defendant, the defendant and the accused settled the matter, and the accused gave a promissory note, with surety for the sum claimed by defendant, and another note for the expense of executing the requisition, — this latter note being made payable to the plaintiff. The plaintiff went with the accused to enable him to obtain security on the notes, and was directed by the defendant and the State's attorney, to release the accused upon his procuring the security, which he did. Plaintiff retained the note payable to himself, at the defendant's request, until after it fell due, and had been put in suit, and then returned it to defendant, refusing to have any more to do with it, and the defendant prosecuted it to judgment.

Held, that such a contract for compensation for services is not illegal, since they were not to be performed within the range of his official duty; and that though subsequent settlement of the matter, if not of a character altogether free from suspicion of illegality, will not affect the plaintiff's claim, as he does not appear to have participated in it; and that there is nothing in the case from which it could fairly be inferred, that the plaintiff agreed to accept the note in payment of his claim.

CLARK *v.* HYDE AND OTHERS.

False imprisonment — Misdescription of a tax.

This was an action of false imprisonment for an arrest upon a warrant and extent against the plaintiff, for not collecting and paying over town taxes put into his hands for collection as town collector. The illegality complained of in the extent was, that in the petition to the justice, and in the recital of the proceedings in the extent, the tax is alleged to have been assessed upon the list of 1853, when it should have been assessed, and was in fact assessed, on the list of 1854.

Held, that the proceeding before the justice, whereby the plaintiff's delinquency was established, is in the nature of a judgment, and that the error in the misdescription of the tax, in the petition, is thereby cured, and that the court will treat the misdescription in the recital of the proceedings in the extent as merely clerical, and not fatal to the judgment whereby the extent issued.

WHEELER *v.* WHEELOCK.

Warranty — Evidence — Demurrer.

Action on the case for false warranty of a horse. The declaration in one count did not specify the particular unsoundness. It also, in another count, alleged an absolute representation that the horse was sound.

Held, that the first count was good on general demurrer; and that proof that the defendant represented the horse sound as far as he knew, he in fact knowing at the time that it was unsound, was good evidence in support of the second count.

STATE *v.* JOHNSON.

Forged paper — Averments — Signatures.

In an indictment for uttering forged paper, it is sufficient

to allege that the same was signed by H. & E. F. Smith, without averring that such persons were a copartnership or corporation. The legal presumption from such an averment is, that such paper is signed by two persons of the names indicated by these initials.

Caledonia County.

CHANDLER *v.* MOULTON.

Collector's sale for non-payment of taxes — Bidding in will avoid the sale.

Ejectment for lands, &c. The defendant claimed title under a town collector's sale, for non-payment of taxes. It appeared that the defendant was himself the collector, and made the sale, and procured some one to bid off the land for his benefit, and upon the time of redemption expiring, the defendant conveyed the land to this person, who immediately conveyed it to the defendant.

Held, that the defendant thereby acquired no title, he acting in a fiduciary capacity, and being, in effect, both vendor and vendee; and the sale being of an official character, is absolutely void, and not merely voidable.

MOORE *v.* BEATTIE.

School districts must consist of territory, as well as of persons.

In constituting school districts, it is required that they consist of territory, geographically defined, and not of persons merely. The same rule obtains in regard to making alterations in the limits of such districts. A vote, therefore, by which one person has been set off from one school district and put to another, without specifying in any other mode what real estate is thus intended to be transferred from one district to the other, is void. But a vote by which one person "and his real estate" is transferred from one school district to another, is valid, and imports such real estate as he holds in the former district.

ALDRICH *v.* BONETT.

Continuation of a cause by plaintiff — Audita querela.

Where a justice cause is continued at the mere suggestion of the plaintiff, without the appearance of any one on behalf of the defendant, and without his knowledge or

consent, it is irregular, and, at common law, the ground of a writ of error. If this be done for a fraudulent purpose, the judgment thereby obtained, at a future day, will be set aside upon writ of *audita querela.*

But if it be done because the defendant claims a trial, and the plaintiff, being unable to attend that day, desires to act in conformity to defendant's wishes, and with no purpose of obtaining any fraudulent advantage of the defendant, it is no ground for maintaining *audita querela.*

Where the continuance is had under the *bona fide* belief that defendant desires it, and for his accommodation, it is the same so far as the writ of *audita querela* is concerned, as if the continuance had been entered by the agreement of the parties, without the appearance of either party, which has been held no ground for maintaining that writ.

BARNET *v.* WALKER & RAY.

Statutory penalties — Proof — Penal and remedial offences.

In actions for the recovery of statutory penalties, full proof is required, the same as in criminal cases, and the defendant is entitled to judgment unless the jury find the facts alleged to be proved, beyond reasonable doubt.

A statute whereby towns recover all damages sustained by them in consequence of the transportation of a pauper within their limits is remedial and not penal. But that clause in the act giving a specific penalty for the offence, although recovered by the town injured, is penal, and not remedial.

HARRINGTON *v.* LEE.

Fraudulent consideration — Defence.

Fraud, in the consideration of a promissory note, but where the maker, upon discovery of such fraud, does not offer or claim to rescind the contract, is no ground of defence in an action upon the note.

RENFREW *v.* RENFREW.

Choses in action — Donatio mortis causa.

Choses in action, accruing to the wife during coverture, and which the husband allows her to keep separate and apart from his property, for her own use, are her separate property, and upon her decease will go to her heirs; but

she may dispose of them by way of *donatio mortis causa*, to whom she will, and the delivery to the husband, for the benefit of the donee, is a valid delivery. And the wife may give such choses absolutely to the husband, or partly to him and partly to others; and, in the latter case, he may receive the delivery of the whole, in part for his own benefit, and partly for the others interested.

MISCELLANEOUS INTELLIGENCE.

RETIREMENT OF CHIEF JUSTICE SHAW.

PROCEEDINGS IN BERKSHIRE COUNTY.

At the September term (1860) of the Supreme Judicial Court for the Commonwealth, in Berkshire County, at a meeting of the bar of that county, the following resolutions were unanimously adopted: —

Resolved,—That as one of the most interesting events in the judicial history of Massachusetts occurred in this county, at the September term of this court, in the year 1830, when the Honorable Lemuel Shaw entered upon his duties as Chief Justice of this court, and as the present is the first term of the court since his voluntary resignation of that high office, there seems a peculiar propriety that some suitable notice of the latter event should here and now be taken.

Resolved,—That as we have been accustomed for the best reasons, during the long period of thirty years, to acquiesce in the decisions of Chief Justice Shaw, as the just and legal adjudication of the rights of parties; so we now, though with great regret, acquiesce in the propriety of his decision to resign this office, while in the full vigor of his intellectual faculties, with his vast experience in the investigation of questions of law and equity at the bar and upon the bench.

Resolved,—That as we now recall the acuteness and power of his intellect, his sound and varied learning, his patient and faithful investigation, his sensibility to the natural justice and equity of particular cases, and yet his inflexible regard to the uniformity of established legal principles, we desire to place these recollections upon record, and while actuated by feelings of personal respect, we find an additional inducement to this proceeding in a sentiment, which we adopt in the very language of the Chief Justice, addressed to us from the bench: "The character and virtues, the just sentiments and useful actions of distinguished men, preserved in the annals, and cherished in the recollections of a grateful people, constitute their richest treasures."

Resolved,—That these resolutions be presented to the Justices of the Supreme Judicial Court, with the respectful request that they may be placed upon the records of the court.

JAMES D. COLT, Chairman.
HENRY W. TAFT, Secretary.

These resolutions were presented to the court (present Dewey, Metcalf, Merrick, and Hoar, JJ.) by Judge Julius Rockwell, who moved that

they might be placed upon the records of the Court; and this motion was supported by the Hon. Henry L. Dawes.

Judge Dewey, in behalf of the court, then addressed the bar as follows:—

We most cordially and sincerely unite with the members of the bar of Berkshire in expressing our profound regret that our venerated friend and brother, Chief Justice Shaw, has felt himself constrained, by his advancing age, to vacate the place so long and so honorably filled by him. Thirty years of unabated devotion to the public, in the discharge of duties like those that devolved upon him, have more than discharged those obligations which every true and loyal man owes to the Commonwealth. Gladly would his associates have seen his term of office yet extended many years. The loss of such a man from our judicial forum is irreparable to the public. But by us, his late associates, it will be most deeply realized.

His fame will not be evanescent. The enduring monuments of his judicial learning, his intellectual grasp, his sound judgment, and his unceasing labor, will be found in the published reports of the judicial decisions of this court. To these he will be found to have contributed to an amount much beyond any one of his associates,—far more than his illustrious predecessors, Parsons and Parker. To Parsons was permitted a judicial life of only seven years, and his opinions extend over only nine volumes of our Reports. Parker's was that of sixteen years, and sixteen volumes of Reports; whilst our late venerable Chief has had the singular fortune of a judicial life protracted to thirty years,—continuing in his full vigor of mind and entire capacity for the duties of his office; and the results of his labors are to be found in forty-nine already published volumes, to which will soon be added seven more to complete the series.

This period of thirty years has been prolific in great changes in all that appertains to the great business relations of men. In these ever-varying changes, and the adaptation of legal principles to them, he has always been found adequate to the occasion. Many questions of constitutional law, of grave import, have been solved. The judicial construction of all the various portions of the Revised Statutes of 1836 has been under his supervision. Upon every branch of the law he will be found to have touched, and how fully he illustrated and exhausted whatever judicial questions he touched, we all well know.

His legal opinions have always been received with the highest respect, for all felt that they were the result not only of patient legal research by a master mind, but emanated from one distinguished for his stern integrity and impartiality.

In his intercourse with his brethren of the bench he will be remembered for his kindness and benevolence, and his entire readiness to assume his full proportion of the arduous labors that devolve upon this court; indeed, at times, he has voluntarily assumed much more than this. He leaves us with the unabated affection, esteem, and reverence of all his associates.

By myself personally his withdrawal is peculiarly felt, inasmuch as it removes from the bench the last of those honored and worthy public servants who composed the highest judicial tribunal when I had the honor to be called to a seat on this bench. Putnam, Wilde, and Morton—all men to be remembered, have long since vacated their places, and are now followed by Chief Justice Shaw.

We rejoice that we are not called to mourn his loss from the land of the living. Long may he be spared to enjoy a serene old age,—an example to

a younger generation of a life which has accomplished the noble purposes of our being; leaving a reputation world-wide; alike known as a distinguished jurist from the Atlantic to the Pacific, and most respectfully held in estimation by the Judges in Westminster Hall.

With great satisfaction we receive a copy of the resolutions of the Berkshire bar, now presented to the court, and direct that they be placed on the records of this court.

At the request of the bar, the reply of the court was ordered to be recorded with the resolutions.

COPYRIGHT IN AN UNPRINTED COMEDY THAT HAD BEEN PUBLICLY REPRESENTED AT A THEATRE.—We take from the *Legal Intelligencer* the following statement of the decision in the case of *Laura Keene* v. *Wheatley & Clarke*, in Equity, in the Circuit Court of the United States for the Eastern District of Pennsylvania.

A party asserting her literary proprietorship of an unprinted comedy, under an assignment to her by its author, complained of its theatrical representation by the defendants, without her consent. It had been composed in England for performance at a London theatre. Difficulties of adaptation preventing its performance there, it was thrown back on the hands of the author. He, subsequently, not being a citizen or a resident of the United States, for a valuable consideration, transferred his proprietorship of it for the United States to the complainant, a resident of New York, where she was the proprietor and manager of a theatre. She adopted measures for securing a copyright; and, in so doing, performed all such acts prescribed by statutes of the United States as were performable without a publication in print. The play, under her management, was adapted to representation at her theatre, with the assistance of an actor of her company, to whom the principal character was allotted; and, in the course of this adaptation, received written additions, underwent curtailment, and was otherwise altered. The additions were made or suggested by this actor. The play, as composed in England, or as thus altered, was never printed. As altered and adapted, it was publicly represented at the complainant's theatre. Here, the same actor, in performing the principal character, introduced, with a view to stage effect, some unwritten additions, relying for the repetition of them, upon his memory alone. The representation, at the complainant's theatre having been successful, the defendants, proprietors, and managers of a theatre at Philadelphia, afterwards performed the play, against her will, at their theatre, imitating closely the general and particular performance of it, as it had been represented by her. They had witnessed its performance at her theatre; but this, whatever assistance it may have afforded them, was not the means of enabling them to represent it themselves. They obtained the contents of the English manuscript from a former copy, which had been unauthorizedly retained, or made, by a player at the London theatre for which it had been composed. The additions, written and unwritten, were, without the permission of the complainant, communicated to them by the same actor who had, under her management, introduced them at her theatre.

The following is an abstract of the points decided.

As the author was a non-resident alien, the complainant, though herself a resident of the United States, could not, as proprietor of the play, sustain her suit upon the statutes of the United States for the protection of authors and their assigns.

But, independently of this legislation, the court having, through the citizenship of the parties, a general equitable jurisdiction in the case, the suit was sustained.

The foreign author's assignment, if to be deemed a partial one, was, *at law*, inoperative except as a license; but, having been for a valuable consideration, was *in equity* valid, as an assignment, for the United States, of such literary property as could exist in his composition.

The play never having been published in print, the complainant, as its literary proprietor, could have sustained her suit if she had not herself represented it theatrically before an indiscriminate audience.

A publication, literary or dramatic, may be limited or general. It is general, whenever the communication effecting it is not restricted, both as to the persons to whom, and the purpose for which it is made. When general, it is a dedication to the public for such unlimited uses, including all modes of publishing and republishing, as it may be the means of directly or secondarily enabling any person to make. The complainant's prior performance of the play at her own theatre was a general publication. Therefore, if it had been the means of directly or secondarily enabling the defendants to represent it through a retention of its words in their own memory, or in that of others of her audience, her literary proprietorship could not have been so asserted as to enable her to maintain her suit.

But the literary proprietorship of an author and his assigns continues after a general publication, except so far as it may be the means of enabling others to make ulterior publication, or otherwise to use the composition published. Therefore, as the complainant's prior public performance of the play was not the means through which the defendants were enabled to represent it, her suit was maintainable on the foundation of literary property, notwithstanding such prior performance.

The written additions to the former manuscript were not independent literary productions, but *accessions* whose proprietorship was incidental to that of the principal composition.

Had this been otherwise, their literary proprietorship would have been in the complainant, and not in the actor who conceived and suggested them when he was in her service, assisting her in adapting the drama to its intended first performance. His relation to her, as his employer, precluded him from acquiring, under such circumstances, an independent interest of his own in such products of his mental exertion in her service.

His *unwritten* additions were not capable of being the subjects of literary proprietorship in any body. But, independently of any question of proprietary right, the complainant, having the advantage of her priority in the performance of this play, and being engaged in a professional competition in which the retention of this advantage would have been profitable to her, his communication to her professional rivals and competitors of the written, as well as unwritten additions, was a breach of confidence on his part, from which a court of equity would not permit the defendants to derive an advantage to her prejudice, or to retain an advantage thus derived.

The additions, written and unwritten, and the incidental curtailments and alterations, having been the means by which the play, as a whole, was adapted successfully to dramatic representation, this equitable doctrine was, independently of any question of literary proprietorship, applicable to the whole play, as acted by the complainant, and imitated by the defendants, including the former composition to which the additions were adapted, so far as it was retained.

In equity, an amendment of the bill, when allowed after answer and replication, does not open the pleadings unrestrictedly. The court looks back through them in order to ascertain to what extent, if any, the amendment may have introduced a new case, or new matter; and, in general, considers them as open to this extent, but no farther.

An amendment of the bill, after answer, does not sanction the introduction on the part of the defendant, by way of plea, of an allegation of a personal disability in the complainant as having existed at the commencement of the suit. The answer itself would overrule such a plea.

DECREE.

This cause having been heard upon the pleadings, and proofs, and admissions, and argued by counsel, and considered by the court, it appearing that the complainant's literary proprietorship of the comedy in question is derived from a non-resident alien author, the court is of opinion that the complainant has no copyright therein, or statutory right of exclusive dramatic representation thereof. But, upon the points involved in the question, whether, independently of the statutes in that behalf provided, the complainant is entitled to relief, the court is of opinion, that, as the said comedy has not been printed, and has never been published otherwise than by theatrical representation, and as the complainant's own theatrical representations of it were not the means through which the defendants were fairly enabled to represent it, their unauthorized theatrical representation of it was such an infraction of rights of the complainant as entitles her to relief. The court is further of opinion that the proper pecuniary compensation, for her indemnity in the premises, is the value of such a license under her hand and seal, accompanied with a fairly written copy of the said comedy, as would have authorized and enabled the defendants — after adequate preparation — to bring out the said comedy at their theatre on the 22d of November, 1858, and represent it then, and afterwards, without restriction or limitation, as it was, then and afterwards, there performed.

It is ordered that either party have leave to apply, within ten days hereafter, for an issue to find the value of a license and copy such as aforesaid.

The cause is referred to the master, to inquire and ascertain the difference between the average profits, at such a theatre, of performances of old or well-known plays, and popular new plays, and to report the nightly profits of the actual performance of the comedy in question, at the said theatre, and the number and dates of its performances there; with authority to examine witnesses, and parties, and order and compel the production of books, accounts, and other papers, and return such material answers or depositions as either party may request him to return.

If no issue shall have been ordered, the master will report further the pecuniary value of a license and copy such as aforesaid. In ascertaining this value, he will take into consideration, so far as it may benefit the defendants, the price which the complainant asked for such a license when she asserted that she had a statutory copyright.

It is directed that if an issue shall be tried, all or any depositions hitherto taken in the cause may be read, on the trial, by either party, subject to the same objections as if the respective deponents had been offered for oral examination as witnesses. And it is further directed that, if such an issue shall have been ordered, the master, so soon as he shall be able to report, in such manner and form as may facilitate the trial thereof, those matters of which the discovery may, in his opinion, be material to either party, for the purposes of such trial, — shall report the same accordingly; confining his report, where both parties do not request the contrary, to such matters of account, or of detail, as cannot be investigated at such a trial without inconvenience, or undue delay.

THE NEW CAPITAL PUNISHMENT LAW IN NEW YORK. — "Among the decisions just made by the Court of Appeals is one in the case of Mrs.

Hartung, which turns upon the construction of the new law in relation to capital punishment.

The court holds that the statute of 1860, in its application to persons under conviction at the time of its passage, is unconstitutional and void, as *ex post facto*, because it prescribes a different and increased punishment from that in force at the time when the offence was committed. To the punishment of death it superadds one year's imprisonment at hard labor.

The Court also expressed the opinion that the new law, having abolished the only statute defining hanging as the *mode* of punishment, and itself prescribing no new mode, *there is now no known sentence which can be pronounced against a person convicted of murder in the first degree.* Though such persons are to be "executed," yet whether it is to be by chloroform or by poisoning in the jail, or by burning at the stake in front of the Capitol, or by hanging, rests in the discretion of nobody knows who,— perhaps the governor, perhaps the sheriff.

The "execution" is to take place whenever ordered by the governor in office. If the governor does not order it, it never takes place. The convict remains imprisoned for an indefinite term, liable at any moment to be ordered to instant execution in any way that caprice may dictate.

There is a prevalent idea that although the statutory provision is abolished, hanging remains the punishment by common law. But where the legislature repeal a statute which was merely in affirmance of the common law, it cannot be presumed that they intended to retain the very thing which they abolished.

In the case of Mrs. Hartung, the offence charged was at common law defined as "petty treason," and the punishment prescribed therefor was burning at the stake. It would scarcely answer to claim that the legislature intended to revive the common law in respect to this class of cases.

It may be urged that all murderers can, under the new law, be convicted of murder in the second degree, for which the punishment is imprisonment for life. But suppose the criminal, to evade this, pleads guilty of the crime of murder in the first degree, how can any court sentence him for a less offence than that of which he is, by his own confession on the record, guilty?

The decision in the case of Mrs. Hartung by the Court of Appeals, it will be seen, also applies to the cases of other persons, now under sentence in the city of New York."

NOTICES OF NEW PUBLICATIONS.

A Treatise on the Law of Libel and Slander. By Franklin Fiske Heard. One vol. 8vo, pp. 441. Lowell: Fisher A. Hildreth. 1860.

An American treatise on the law of libel and slander has long been needed. The work of Mr. Starkie was an excellent one for its day and country, (the second and last English edition having been published in 1830,) and the labors of Mr. Wendell, the American editor, have added much to its value for the profession here. But it contains many topics which were never applicable to this country, and others which are now obsolete. Many points which, at the time Mr. Starkie's treatise

was written, were doubtful, have been subsequently settled, and many others which were involved in a cloud of details and specialities, have since been reduced to principle. A large mass of reference has thus become useless and embarrassing; and the practitioner in this country has felt the necessity of a work on this subject, written with exclusive reference to our own jurisprudence.

This volume, by Mr. Heard, supplies this want, and will be found an excellent work. How wide a field is travelled over, can be seen by the following statement of the contents of the volume.

Book I. Civil Actions — Division of the Subject — The Charge of Crime — Imputations of Infectious Disorders—Words spoken of a person in his Profession, Office, or Trade—Special Damage—Slander of Title—Libel—Privileged Communications, generally — Publications made in the course of Legislative Proceedings — Judicial Proceedings — Reports of Judicial Proceedings — Confidential and Official Communications—Character of Servants—Literary Criticisms and Criticisms on Works of Science and Art—The Repetition of Slander—The Truth as a Justification in Civil Actions—The Principles of Construction in Slander and Libel—Parties to the Action—The Declaration—Demurrers—The Plea—The Replication—Repleader—Evidence—Damages—The Proper Province of the Jury—Liabilities of Authors and Publishers of Libels to each other, in respect to Indemnity and Contribution.

Book II. Criminal Offence — Libel and Indictable Slander—Indictment — Evidence.

Under each division of the subject, Mr. Heard has clearly stated the legal principles applicable thereto, and has supported his statement of the law by the leading authorities in England and this country, so that the book, at this day, gives us the law of libel and slander as it now is. We cheerfully recommend the book to the profession, in the belief that it will be found a great help to those who have occasion for its use.

Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts. By Horace Gray, Jr. Vol. XIII. pp. 671. Boston: Little, Brown, & Co. 1860.

The Reports of Mr. Gray have acquired such a well-earned reputation, that commendation of them is superfluous. Yet we owe especial thanks to him for the publication of this volume, before the intermediate volumes (vol. 8–12) have made their appearance: for thereby, before the fall circuit of the Supreme Court was commenced, this year, the court and bar had the printed volume of the decisions in the cases that were argued and determined on the circuit of last year, in the Western counties and in Worcester county. Another praiseworthy feature of the volume is, that it contains more pages than some of the recent volumes of reports have had.

A Treatise on the American Law of Real Property. By Emory Washburn, LL. D., University Professor of Law in Harvard University. In two volumes. Vol. I. pp. 688. Boston: Little, Brown, & Co. 1860.

Professor Washburn thus states, in the preface, the plan of his treatise. "The work is divided into three books, the first embracing the nature and quantity of estates in corporeal hereditaments, with their qualities and characteristics, which will be found in the volume now published; the second treating of incorporeal hereditaments, their nature and characteristics, and the third presenting in outline, the titles by which real property

may be acquired and held, and the rules of its transmission and transfer which are to constitute a second volume. It is subdivided into chapters, each intended to embrace a separate and distinct subject, with a subdivision in some cases into sections, with such reference in the notes to the American statutes, as to give the reader a tolerably full idea of the coincidence or diversity of the rules of the several States, upon the subjects therein treated of. It aims, in brief, to provide a safe and convenient book of reference to the lawyer, while it furnishes an elementary treatise for the use of the student; embracing what, in the form of lectures, has been received with favor by successive classes of the Law School, for which they were originally prepared."

Upon a subject like this, it is necessary, in some of its parts, to treat it historically, and even to refer to what is practically obsolete, for otherwise, without this knowledge, the elementary terms and phrases in modern use could not be fully understood. And much of the common law needs for its explanation the light reflected from the circumstances in which it had its origin. Professor Washburn has not overlooked this necessity, and has given us so much of the old feudal law as is necessary to explain the present condition of law, and to connect it with what has been. He has at the same time avoided the opposite extreme of overburdening his subject with too much of what is obsolete or purely historical.

In regard to the text of his work, he says in his preface, "It has been the intention of the writer to state no proposition as law, which did not appear to be sustained by satisfactory authority. So far as could be reasonably done, those authorities have been cited. But with all his precaution, this could not fail to load his page with references, and he has contented himself not unfrequently with citing an elementary work of received authority to sustain a proposition, rather than multiply the citation of cases, which are to be found, if desired, in the elementary work referred to. In some instances he has been obliged to re'y upon the digest of a reported case, but this has been done with caution, especially when the point to be stated or illustrated seemed to be new or doubtful; on the other hand, he has but in a few instances undertaken to give digests of reported cases. He has endeavored to state principles fully and clearly, and only for purposes of illustration has occupied space with a detail of the facts in the cases cited."

Professor Washburn appears to have executed his plan faithfully and well. Availing himself of the labors of other authors, English and American, he has reproduced them in his own way, and after his own system, and in an intelligible manner. The difficult paths of real law will be hereafter more easy to the American student; and the practitioner will find readily in this volume, the law as it is clearly and succinctly stated. The notes containing the abstracts of the statute provisions of the several States upon given subjects, will be found very valuable.

We thing this work will gain, as it deserves to do, the confidence of the profession, and that by it its author has shown himself a fit associate with those distinguished jurists of the Dane Law School who have done so much to illustrate and adorn American jurisprudence.

UNITED STATES DIGEST; Containing a Digest of Decisions of the Courts of Common Law, Equity, and Admiralty, in the United States and England. By GEORGE SILSBEE HALE and H. FARNHAM SMITH of the Boston Bar. Vol. XIII. Annual Digest for 1859, pp. 840. Boston: Little, Brown, & Co. 1860.

This annual digest has become indispensable to the practising lawyer,

in the constantly multiplying list of reports and reporters. The present volume contains a digest of all the cases, in *sixty-one* volumes of reports, —*fifty-eight* of which are American reports. In the subdivision of subjects, and arrangement of the cases under them, Mr. Hale has added greatly to the value of the work, because he has thereby made the reference by subject matter more easy and simple. The unpretending and unending labors of the editors of this digest deserve the highest and best thanks of the profession.

LAW LEXICON, OR DICTIONARY OF JURISPRUDENCE. Explaining the Techinical Words and Phrases employed in the several Departments of English Law, including the various Legal Terms used in Commercial Transactions; together with an explanatory as well as literal Translation of the Latin maxims contained in the writings of the Ancient and Modern Commentators. By J. J. S. WHARTON, ESQ., M. A. Oxon, Barrister at Law, author of "The Articled Clerk's Manual," etc. Second American, from the second London edition, with additions by EDWARD HOPPER. One vol. pp. 790. Philadelphia: Kay & Brother, 19 South Sixth Street, Law Booksellers, Publishers, and Importers. 1860.

The above extended title-page gives pretty fully the contents of the volume, and indicates its purposes. The author, an Englishman, has prepared the work for his own country; yet a large portion of its pages are of use to the American lawyer. There is a vast number of terms and words explained, a great many of which we have not been able to find in any other law dictionary. The definitions appear generally to be accurate, and while they are not scanty, they avoid the opposite fault of prolixity. The collection of Latin maxims is especially full, and they seem to be translated correctly, and well rendered into the idioms of our language. The book will be found a serviceable auxiliary to any working library. It will occupy a place quite distinct from, and independent of the dictionary of *American* law and jurisprudence, by Mr. Bouvier. The student will find it a convenient manual for the ancient learning of the law, and the practising lawyer will gather from it "answers to sudden doubts, and explanations of present difficulties, as to the proper meaning of certain technicalities."

INTRODUCTION TO AMERICAN LAW. Designed as a first book for students. By TIMOTHY WALKER, LL. D., late Professor of Law in the Cincinnati College. Fourth Edition. One vol. pp. 778. Boston: Little, Brown, & Co. 1860.

The first edition of this work was published in 1837, the second in 1844, and the third in 1855; all in the lifetime of the learned author. This edition is edited by Edward L. Pierce, Esq., of the Boston bar, whose annotations, amounting to more than twenty pages, appear to have been made with great judgment, thoroughness, and research.

To those who have never read the treatise of Mr. Walker, it should be said that, as its title indicates, it is designed as a first book for students, and is framed upon the theory that the American student should commence with a systematic outline of American rather than English law. However any one may differ with him upon the theory, it is generally admitted that the treatise is written with learning and ability, and in a vigorous and lively style. The vast extent of the subject as treated by him, is shown by the general statement of the contents of the volume. It is divided into seven parts. Part 1 contains Preliminary considerations — General principles—Historical summary — Divisions and definitions. Part 2, Con-

stitutional Law. Part 3, The Law of Persons. Part 4, The Law of Property. Part 5, The Law of Crimes. Part 6, The Law of Procedure. Part 7, International Law. And as the book is intended for students, the sources of information are very fully stated in the notes. The book is a very valuable one for students and for general readers.

A Treatise on Medical Jurisprudence. By Francis Wharton, author of "A Treatise on American Criminal Law," "Precedents and Indictments," "American Law of Homicide," etc., and Moreton Stillé, M. D., lecturer on the Principles and Practice of Medicine in the Philadelphia Association for Medical Instruction. The medical part revised and corrected, with numerous additions by Alfred Stillé, M. D. Second and revised edition. One vol. pp. 1031. Philadelphia: Kay & Brother, Publishers. 1860.

This is another very valuable contribution to medical jurisprudence. The first edition was published in 1855, — soon after the death of Moreton Stillé. In the present edition nearly three hundred pages have been added to the legal and psychological department. The chapters on Insanity have been rearranged, expanded, and in some material points corrected, so as to bring them into harmony with the current decisions of the English and American courts; and the chapters on Circumstantial Evidence have been condensed by abridging the cases stated fully in the former volume. Several distinct topics have been introduced and examined at length; among which may be mentioned Survivorship, — Medical Malpractice, — the Legal Relations of Identity, — the Presumptions to be drawn from Wounds and the Instrument of Death, — and the Psychical Indications of Guilt. In the medical portion of the work, the editor has added to it about eighty pages of new matter, consisting of a chapter on the Signs of Death, besides many illustrative cases, and recent methods of investigation.

A prominent feature of this treatise is "first, the incorporation in its pages of the results of late continental, and particularly French and German research; and secondly, the bringing together stereoscopically, if the metaphor can be permitted, of the legal and medical points of vision, so that the information required by each profession might be collected and viewed at the same time and within the same compass." And this it was "hoped to reach, not so much by a concurrent authorship of each page, as by a general preliminary comparison of views and adjustment of material by the two writers, by whom the task was undertaken, followed up by a division of the subject matter between them, in subordination to the plan previously agreed upon."

The volume contains a large amount of information of use and interest, not only to the professional, but also to the general reader. Mr. Wharton's experience as a law writer upon criminal law and kindred topics, has given him a large advantage in the preparation of his part of this work. And we recommend the book as a valuable addition to any library.

NEW PUBLICATIONS RECEIVED.

Involuntary Confessions: A Monograph. By Francis Wharton. pp. 36. Philadelphia: Kay & Brother, 19 South Sixth Street, Law Booksellers, Publishers, and Importers. 1860.

MAY COLORED PERSONS VOTE IN OHIO AS WHITE MALE CITIZENS? And are Election Officers liable for Mistakes in Refusing a Person's Vote? A Review. By JOHN H. JAMES. pp. 26. Columbus: Joseph H. Riley, Publisher and Bookseller. 1860.

INSOLVENTS IN MASSACHUSETTS.

Name of Insolvent.	Residence.	Commenceme't of Proceedings.	Name of Judge.
		1860.	Returned by
Baxter, Elijah B.	Boston,	Sept. 8,	Isaac Ames.
Black, James A. (1)	Spencer,	" 18,	Henry Chapin.
Blake, Walter R. (2)	Chelsea,	" 15,	Isaac Ames.
*Blanchard. Walter	Wilmington,	" 13,	Wm. A. Richardson.
Brocklebank, Samuel K.	Georgetown,	" 4,	Geo. F. Choate.
Carver, Grenville	Bridgewater,	" 22,	William H. Wood.
Chase, John S. (3)	Medford,	" 5,	Wm. A. Richardson.
Clough, Jacob N. M. (4)	Boston,	" 3,	Isaac Ames.
Cobe, Wm.	Boston,	" 10,	"
Cullen, Wm.	Boston,	" 7,	"
Dodge, Wm. O. (4)	Boston,	" 3,	"
Ellis, Geo. W.	Medford,	" 19,	George White.
Frost, Seth F.	Brighton,	" 10,	Wm. A. Richardson.
Godfrey, Silas F. (4)	Boston,	" 3,	Isaac Ames.
Grout, De Mett	Ashland,	" 27,	Wm. A. Richardson.
Hallett, Ezekiel, Jr. (5)	Northboro',	" 10,	Henry Chapin.
Hayward, Samuel N.	No. Bridgewater,	" 13,	William H. Wood.
Hilton, Aaron S.	Salisbury,	" 4,	Geo. F. Choate.
Jones, Henry S. (2)	Chelsea,	" 15,	Isaac Ames.
Kibbe, Ora B.	Westminster,	" 6,	Henry Chapin.
Kehew, John H.	Salem,	" 14,	Geo. F. Choate.
Lane, Wm. H. Jr. (3)	Newton,	" 5,	Wm. A. Richardson.
*Lynde, Joseph	Melrose,	" 17,	"
McCambridge, Daniel (1)	Spencer,	" 18,	Henry Chapin.
Miller, Wm. O.	Wareham,	" 5,	William H. Wood.
Morgan, Henry I. (5)	Northboro'.	" 6,	Henry Chapin.
Munroe, James M.	Lynn,	" 3,	Geo. F. Choate.
Nelson, David H.	Newburyport,	August 6,	"
Peach, Addison N.	Boston,	Sept. 12,	Isaac Ames.
Peasley, Charles	Cambridge,	" 27,	Wm. A. Richardson.
Proctor, Alfred	Saugus,	" 22,	Geo. F. Choate.
*Reed, Samuel (6)	Groton,	" 27,	Wm. A. Richardson.
Ross, Jeremiah	Dorchester,	" 17,	George White.
Searl, Augustus	Salem,	" 21,	Geo. F. Choate.
Smith, Francis	No. Andover,	" 28,	"
Stowell, Henry P.	Lawrence,	" 4,	"
Thomas, Spencer	Boston,	" 27,	Isaac Ames.
Watson, Daniel S.	Gloucester,	" 15,	Geo. F. Choate.
Whitman, James D.	Milford,	" 11,	Henry Chapin.
*Whitney, Chas. L. (6)	Groton,	" 27,	Wm. A. Richardson.
Whittier, Wm. P.	Lawrence,	" 21,	Geo. F. Choate.

FIRMS, &c.

(1) Black & McCambridge
(2) Jones & Blake.
(3) John S. Chase & Co.
(4) Clough, Godfrey, & Co
(5) Hallett & Morgan.
(6) Whitney & Reed.

*Petitions dismissed.